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ADOPTION

Consent of parents; freedom from pressure; liability of parents to proposed adopters for maintenance of child; statement by children's officer to parents; Adoption of Children (County Court)Rules, 1952 (S.I. 1952, No. 1258), r. 7, sch. II, para. 17.—It is the duty of a guardian *ad litem* to investigate all the circumstances relevant to a proposed adoption, and, particularly to make a report whether the consent of the parents is given without pressure from other persons. Notwithstanding that duty, the children's officer of a local authority, appointed as guardian *ad litem* of an infant in adoption proceedings, told the mother of the infant, who had intimated her intention to withdraw her consent to the adoption, that the proposed adopters might make a claim for the maintenance of the child who had stayed with them during the probationary period. The mother withdrew her consent, but later she consented to the adoption, and the county court judge made an adoption order. On an appeal by the mother against the order on the ground that her consent was vitiated by the pressure brought to bear upon her by the children's officer:—*Held*, assuming that an appeal lay on the ground relied on by the mother, the statement of the children's officer that the mother might become liable for the maintenance of the child for the period mentioned was unjustifiable and regrettable; if it had affected the mind of the mother it would have vitiated her consent; but there was no evidence that it had such an effect, and, therefore, the appeal failed. (*Re* P. (an infant). C.A.) 139

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BASTARDY

Affiliation order; failure by putative father to comply; application for warrant of commitment; putative father serving member of United States Armed Forces; refusal by justices to issue warrant; Magistrates' Courts Act, 1952 (15 and 16 Geo. 6 and 1 Eliz. 2, c. 55), s. 64 (2) (b); United States of America (Visiting Forces) Order, 1942 (S.R. & O., 1942, No. 966), sch., para. 2 (3) (b); Army Act, s. 145 (1).—An affiliation order in respect of a bastard child born to one S, an unmarried woman, was made against a member of the United States Armed Forces then stationed in England. He failed to keep up the payments for the maintenance of the child directed by the order. On a complaint by S a summons in respect of the arrears was issued and served on him, but he failed to appear before the justices. S then

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issued a complaint for a warrant under s. 64 (2) of the Magistrates' Courts Act, 1952, with a view to his committal to prison, but the justices held that they had no jurisdiction to issue the warrant:—*Held*, that the decision of the justices was right, as para. 2 (3) (b) of the schedule to the United States of America (Visiting Forces) Order, 1942, conferred on members of the United States Armed Forces the same privileges and immunities as were conferred by (*inter alia*) the Army Act on British soldiers, and under s. 145 (1) of the Army Act execution in respect of an affiliation order could not issue against the person or pay of a British soldier (R. *v.* Birkenhead Justices. *Ex parte* Smith. Q.B.D.) 203

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CARAVAN SITE

Provision by local authority; theft; liability of authority; exemption clause; "person using the camping ground"; bailment.—A corporation provided a camping ground for holiday-makers. The camp was open during the summer season, *viz.*, from the first Sunday in March until the last Sunday in October, and during the remainder of the year caravans might be parked on the tarmac area, but could not be used by their owners. The charge for a site while the camp was open was 25*s.* a week, and at other times 12*s.* 6*d.* a week. Camp regulations, made by the corporation and forming part of the contracts with the caravan owners, provided that during the summer the right to use the camp was a licence only. Regulation 8 contained an exemption clause in the following terms: "Liability. The corporation will accept no liability for injury to any person using the camping ground or for damage to or loss of the property of any such person". The plaintiff, the owner of a caravan, used the camp facilities during the summer season of 1951, and after the end of that season she availed herself of the parking facilities provided by the corporation during the winter months. At her request the caravan was removed to the tarmac area in accordance with the camp regulations. During the night of March 11, 1952, when the summer season had started and the camp was open, the caravan was stolen from the tarmac. The plaintiff claimed damages for loss of the caravan, alleging that the loss was caused by the negligence of the servants of the corporation:—*Held*, at the material time the plaintiff was a person using the camping ground within reg. 8, and, as the theft occurred during the summer season when the camp was open, the corporation was not a bailee of the plaintiff's caravan and was not liable for its loss. *Semble*, that during the winter period the corporation was a bailee of the caravan. (Halbauer *v.* Brighton Corporation. C.A.) 446

CHILDREN AND YOUNG PERSONS

1. Care by local authority; boarding out with foster parents; desire of mother to take over care; intention to board out child with putative father and his wife; duty of foster parents to allow child to be removed; discretion of local authority not open to review; Children Act, 1948 (11 and 12 Geo. 6, c. 43), s. 1 (1) (b), s. 1 (3), s. 13 (1) (a).—In March, 1951, a local authority received an illegitimate child into their care under s. 1 (1) (b) of the Children Act, 1948, and on the same day, under s. 13 (1) (a) of the Act and with the consent of the mother, boarded it out with foster parents under an agreement in the form set out in the schedule to the Children and Young Persons (Boarding Out) Rules, 1946, one of the provisions of the agreement being that

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the foster parents would allow the child to be removed when required by the local authority. In January, 1954, the mother notified the local authority that she desired to take over the care of the child by boarding it out with the putative father and his wife, who wished to look after it. The local authority required the foster parents to deliver up the child to them, with the intention of handing it over to the mother, but the foster parents refused to do so:—*Held*, that a writ of *habeas corpus* must issue against the foster parents, as the local authority were the body to whom Parliament had entrusted the care of the child, and that it was not open to the court to review the discretion of the authority with regard to what was for the welfare of the child. *Per curiam* (DONOVAN, J., *dissentiente*): The desire of the mother to take over the child and board it out with the putative father and his wife was a desire "to take over the care of the child" within the meaning of s. 1 (3) of the Act. (*Re* A. B. (an infant). Q.B.D.) ... 318

2. Custody of child; access; variation of order; jurisdiction of court of summary jurisdiction where applicant for variation resides; Guardianship and Maintenance of Infants Act, 1951 (14 and 15 Geo. 6, c. 56), s. 1 (1); Children Act, 1948 (11 and 12 Geo. 6, c. 43), s. 53.—On December 15, 1952, Eastbourne justices gave to the mother the custody of the child of the marriage, ordered the father to pay £1 a week for his maintenance, and granted the father access to the child one half day each week. In March, 1953, the father applied to Wallington justices, within whose jurisdiction he then resided, for a variation of the order of the Eastbourne justices by granting him care and control of the child for a period of seven continuous days in every 10 weeks:—*Held*, 1 (1) of the Guardianship and Maintenance of Infants Act, 1951, gave to the court of summary jurisdiction having jurisdiction in the place in which the applicant resided at the time of the application power to vary an order made under s. 5 of the Guardianship of Infants Act, 1886; on the facts, the father resided within the jurisdiction of the Wallington justices; and, therefore, those justices had power to hear his application and to vary the order of the Eastbourne justices. *Semble*, the jurisdiction conferred by s. 53 of the Children Act, 1948, to enforce, vary, or revoke in like manner as an affiliation order an order of a court of summary jurisdiction for the payment of money under the Guardianship of Infants Act, 1886, is limited to that part of the order which concerns money payments, and does not extend to such a term of the order as the grant of access at specified times to the parent of an infant whose custody is given to the other parent. Colchester *v.* Peck (1926) (90 J.P. 130); and R. *v.* Copestake: *Ex parte* Wilkinson (1927) (90 J.P. 191), applied. Pratt *v.* Pratt (1927) (96 L.J.P. 123) and Markham *v.* Markham (1946) (111 J.P. 29), questioned. (*Re* D. (an infant). C.A.) 25

3. Protection; "foster child"; Public Health Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 49), s. 206 (3).—The plaintiffs conducted an independent private boarding school. Of the 102 full fee-paying pupils in residence in December, 1951, 23 were paid for by or on behalf of parents and 79 by local authorities. Of the 79 whose fees were paid by local authorities, nine were in the care of the local authority under the provisions of the Children Act, 1948, Part I, one was the subject of a probation order in which residence at the school was made a condition, and one was the subject of a "fit person" order under the Children and Young Persons Act, 1933, s. 62 (1). All the children, save those in the care of the local authority and the one entrusted to the local authority as

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a "fit person", had homes and parents to which they returned at the end of the school term, and the parents had surrendered none of their parental rights in respect of them:—*Held*, as the parents retained their parental rights in respect of their children, none of the children (apart from those in the care of the local authority and the one the subject of a "fit person" order) was living apart from its parents, and, therefore, none of them was a "foster child" within the Public Health Act, 1936, s. 206 (3); in respect of the remaining children, the local authority, by virtue of s. 75 (4) of the Act of 1933 and s. 3 (1) of the Act of 1948 in each case had all the rights and powers of the child's parent or guardian, and maintained adequate supervision in term time; and, therefore, they, similarly, were not foster children within s. 206 (3). (Wallbridge and Another *v.* Dorset County Council. Ch.D.) 305

CRIMINAL LAW

1. Appeal; sentence; probation order; breach; probation order and statement relating to breach to be before court.—Where, a breach of a probation order having been proved, a prisoner is sentenced for the original offence and appeals against sentence to the Court of Criminal Appeal, the original probation order, together with a statement relating to the breach, should be before the court. (*R. v.* Maber. C.C.A.) 259

2. Attempt; sale above maximum permitted price; meat; meat parcels prepared with correct price tickets; false price tickets kept separately; intention later to affix to parcels; Meat (Prices) (Great Britain) Order, 1952 (S.I., 1952, No. 1122), art. 3.—Packages of meat with tickets correctly specifying the contents and prices were found in the refrigerator of a butcher's shop, of which the defendant was manager. Another set of tickets specifying prices above the maximum permitted prices were found in a drawer in the shop. The defendant had instructed an employee to substitute those tickets before the delivery of the meat. An information charging the defendant with attempting to sell meat at a price in excess of the maximum permitted price was dismissed by justices:—*Held*, the defendant's acts amounted merely to an intention to commit the offence and preparation for its commission, and were not sufficiently connected with the offence to constitute an attempt. (Hope *v.* Brown. Q.B.D.) 134

3. Carnal knowledge; girl under 16; defence of reasonable belief; "first occasion"; separate committals for trial on two separate occasions relating to two different girls; trial of both charges in one indictment; Criminal Law Amendment Act, 1922 (12 and 13 Geo. 5, c. 56), s. 2, proviso.—By s. 2 of the Criminal Law Amendment Act, 1922: "Reasonable cause to believe that a girl was of or above the age of 16 years shall not be a defence to a charge [of carnal knowledge of a girl under 16] under s. 5 . . . of the Criminal Law Amendment Act, 1885 . . . Provided that in the case of a man of 23 years of age or under the presence of reasonable cause to believe that the girl was over the age of sixteen years shall be a valid defence on the first occasion on which he is charged with an offence under this section." The accused was committed on two separate occasions by justices for trial at assizes on two charges of carnal knowledge of two different girls between the ages of thirteen and sixteen years, contrary to s. 5. At the trial both charges were included in one indictment:—*Held*, (i) a "charge" was made within the meaning of the section when the accused was charged before a court which had jurisdiction to determine the matter in question; where justices committed the accused for trial, there was no "charge" until he was arraigned on indictment;

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and, therefore, the accused was "charged" for the first time at the trial; (ii) although the accused was committed for trial on separate occasions, both charges were joined in one indictment, and, therefore, the accused was charged on one "occasion" for the purposes of the proviso to s. 2 of the Act of 1922. R. *v.* Rogers (1953) (117 J.P. 83), applied. (R. *v.* Rider. Chelmsford Asz.) 73

4. Carnal knowledge; procuring of mental defective girl; girl under statutory supervision; Mental Deficiency Act, 1913 (3 and 4 Geo. 5, c. 28), s. 56 (1) (a) (b).—By s. 56 (1) of the Mental Deficiency Act 1913: "Any person—(a) who unlawfully and carnally knows . . . any woman or girl under care or treatment in an institution or certified house or approved home, or whilst placed out on licence therefrom or under guardianship under this Act; or (b) who procures . . . any woman or girl who is a defective to have unlawful carnal connexion . . . with any person or persons . . . shall be guilty of a misdemeanour. . . ." P., a certified mental defective, was not in an institution or certified house or approved home, or on licence therefrom, or under guardianship, but she was under the statutory supervision of a mental health social worker who boarded her out with the defendant's wife at the defendant's house. Evidence was given that while P. was at the house the defendant one morning asked her to go back to bed, followed her, and there had carnal connexion with her. On a charge against the defendant under s. 56 (1) (b):—*Held*, the facts alleged did not show that the defendant had procured P. to have carnal connexion with himself. *Per curiam*: It was nowhere provided in the Act that it was an offence for a person to have unlawful carnal knowledge with a mentally defective female who was not in one of the categories mentioned in s. 56 (1) (a). (R. *v.* Cook. Leeds Asz.) 71

5. Committal for trial; chairman of examining justices also presiding in court where appellant tried at quarter sessions; validity of proceedings; course desirable to be followed; sentence; preventive detention; recidivist; spells of honest work between convictions.—The chairman of the examining justices who committed the appellant for trial at quarter sessions, being also deputy chairman at quarter sessions, presided in the court which sentenced the appellant:—*Held*, that there was no ground in law why the same person should not sit in both capacities, and neither the conviction nor the sentence at quarter sessions could be interfered with by the Court of Criminal Appeal on that ground, but the practice was not a desirable one, and, as a general rule, it should be arranged for the trial at quarter sessions to take place in a court in which the chairman of the examining justices was not presiding. *Per curiam*: Preventive detention is intended for prisoners who have shown by their previous history and conduct that they cannot be trusted to abstain from crime, but if this is shown the sentence is not rendered inappropriate by the fact that a prisoner has done spells of honest work between convictions. (R. *v.* Powell. C.C.A.) 15

6. Conviction by magistrates of indictable offence; committal to quarter sessions for sentence; appeal to Court of Criminal Appeal; no right to question validity of committal; Criminal Justice Act, 1948 (11 and 12 Geo. 6, c. 58), s. 29 (1) (as replaced by Magistrates' Courts Act, 1952 (15 and 16 Geo. 6 and 1 Eliz. 2, c. 55), s. 29 (3) (d).—Where a prisoner has been convicted at a magistrates' court of an indictable offence and committed to quarter sessions for sentence under s. 29

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(1) of the Criminal Justice Act, 1948, as replaced by s. 29 of the Magistrates' Courts Act, 1952, an appeal lies to the Court of Criminal Appeal under s. 29 (3) (d) of the1948 Act on sentence only. On such an appeal it is not open to the appellant to question the validity of the committal for sentence, *e.g.*, on the ground that, as he was a person of good character, there could be no "information as to his character or antecedents" within the meaning of s. 29 (1) which would justify committal. *Per curiam*: The remedy of a convicted person who wished to question the validity of the commitment to quarter sessions was to apply for an order of prohibition directed to quarter sessions to prohibit them from dealing with the case or for an order of *certiorari* directed to the court of summary jurisdiction to bring up the order of commitment to be quashed. (R. *v.* Warren. C.C.A.) 238

7. Evidence; admissibility; former wife of prisoner; decree of nullity; offence during coverture; wife still an incompetent witness.—Since impotence on the part of a spouse merely renders the marriage voidable at the suit of the other spouse and the marriage is regarded as valid and subsisting until it has been so avoided, the incompetency which attaches to a spouse as a witness still attaches after a degree of nullity on the ground of impotence in respect of any matter arising during the coverture. Where, therefore, a wife, who before the prosecution of her husband on a charge of forgery had obtained a decree of nullity on the ground of his impotence, was called as a witness for the prosecution on his trial in respect of matters which had occurred during the coverture and gave evidence on a vital point:—*Held*, that the conviction must be quashed. (R. *v.* Algar. C.C.A.) 56

8. Evidence; accomplice; corroboration; need of warning to jury; "accomplice"; *particeps criminis*.—In July, 1953, a number of youths, including the appellant, attacked four other youths, including B. During the attack a knife was used and subsequently B. died of wounds. The appellant and five others, including L., were indicted for the murder of B., but at the trial the Crown offered no evidence against L. and three others, and the jury returned a formal verdict of "Not Guilty" of murder in respect of them. At the trial of the appellant and the fifth youth the jury disagreed. Later no evidence was offered against the fifth youth, and he was found "Not Guilty" of murder. At the second trial of the appellant L. was called as a witness for the prosecution. In his summing-up the trial judge did not warn the jury that L's evidence was, or should be treated as, the evidence of an accomplice:—*Held*, in a criminal trial, where a person who was an accomplice gave evidence on behalf of the prosecution, it was the duty of the judge to warn the jury that, although they might convict on his evidence, it was dangerous to do so unless it was corroborated; this rule, although a rule of practice, now had the force of a rule of law, and where the judge failed to warn the jury in accordance with it the conviction would be quashed, even if, in fact, there was ample corroboration of the evidence of the accomplice, unless the appellate court could apply the proviso to s. 4 (1) of the Criminal Appeal Act, 1907; a person called as witness for the prosecution was to be treated as an accomplice if he was *particeps criminis* in respect of the actual crime charged in the case of a felony; L., if he was to be an accomplice at all, had to be an accomplice to the crime of murder, and, as there was no evidence that L. knew that any of his companions had a knife, he was not an accomplice in a crime which consisted in its felonious use; and, therefore, it was not necessary for the trial judge to give a warn-

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ing to the jury. *Per curiam*: In two cases persons falling strictly outside the ambit of the category of *particeps criminis* have, in particular decisions, been held to be accomplices for the purpose of the rule: *viz.*, (i) receivers have been held to be accomplices of the thieves from whom they receive goods on a trial of the latter for larceny (R. *v.* Jennings (1912) (17 Cr. App. Rep. 242); R. *v.* Dixon (1925) (19 Cr. App. Rep. 36)); (ii) when X has been charged with a specific offence on a particular occasion, and evidence is admissible, and has been admitted, of his having committed crimes of the identical type on other occasions, as proving system and intent and negativing accident: in such cases the court has held that in relation to such other similar offences, if evidence of them were given by parties to them, the evidence of such other parties should not be left to the jury without a warning that it is dangerous to accept it without corroboration: R. *v.* Mohamed Farid (1945) (173 L.T. 68). (Davies *v.* Director of Public Prosecutions. House of Lords.) 222

9. Evidence; wife; competence as witness; husband charged with arson of wife's property; Married Women's Property Act, 1882 (45 and 46 Vict., c. 75), s. 12; Criminal Evidence Act, 1898 (61 and 62 Vict., c. 36), s. 4 (1).—On a charge against a husband of arson of his wife's property the evidence of the wife is admissible under s. 12 of the Married Women's Property Act, 1882, and s. 4 (1) of the Criminal Evidence Act, 1898. (R. *v.* Moore. Leeds Asz.) 284

10. Falsification of accounts; intent to defraud; gross profits inflated with intent to avoid dismissal from employment; Falsification of Accounts Act, 1875 (38 and 39 Vict., c. 24), s. 1.—The appellant, who was the manager of the radio department of a co-operative society, was convicted (*inter alia*) of falsification of accounts. He admitted that he had made the false entries, but contended that he had not done this, as the prosecution alleged, with the intention of concealing thefts by him of wireless sets, his intention being to make the gross profits of his department appear higher than it actually was in order that he might not be dismissed from his employment. The recorder directed the jury that, whichever of the two versions was true, there was an intent to defraud:—*Held*, that the direction was correct, as, on the appellant's own version he was intending by the falsification to induce his employers to pay him wages and thereby act to their financial detriment. Dictum of BUCKLEY, J., in *Re* London & Globe Finance Corpn., Ltd. ([1903] 1 Ch. 732) applied. (R. *v.* Wines. C.C.A.) ... 49

11. Forgery; evidence; cross-examination of prisoner as to previous offence where charge withdrawn; no issue whether prisoner knew cheque named in indictment to be forged; Criminal Evidence Act, 1898 (61 and 62 Vict., c. 36), s. 1, proviso (f) (i).—The appellant was convicted of obtaining a sum of money by a forged cheque purporting to be signed by D.W.G. D.W.G. swore that he had not signed the cheque. The appellant was identified as the person who had presented the cheque and collected the money. The appellant's defence was that D.W.G. had signed the cheque and that he (the appellant) was not the person who presented it. He did not raise the defence that, if the cheque was forged, he was not aware of the forgery. The appellant said in his evidence that he had never been convicted of any offence. He was cross-examined with regard to his having been charged on a previous occasion with relation to a forged cheque in a case where the proceedings had been discontinued, and he admitted that he had been so charged:—*Held*, that, if the issue in the case had

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been whether the appellant knew the cheque named in the indictment to be forged, the cross-examination might well have been admissible, but, there being no such issue, cross-examination on a charge which had not proceeded to conviction was inadmissible, and the conviction must be quashed. Maxwell *v.* Director of Public Prosecutions (1935) (98 J.P. 387), referred to. (R. *v.* Nicoloudis. C.C.A.) 486

12. Gross indecency; attempt to procure; relation to offence of acts charged.—The appellant was convicted of an attempt to procure an act of gross indecency with a male person after evidence had been given that he had spoken to a boy aged 14 in the street, given him beer and ice cream in a café, and then gone into a park with him, and, while sitting there alone with him, had put his arm round the boy and said and done things which manifested his criminal purpose of inducing the boy to commit an act of gross indecency with him. He asked the boy to meet him the next night promising him a reward of money if he did so. The next night he met the boy at the suggested meeting place and invited him to go for a walk. The appellant was then arrested. The court took the view that the conduct of the appellant immediately before and at the time of the invitation manifested his purpose in inviting the boy to meet him the next night and go for a walk. The walk which had already taken place had been used for making indecent suggestions and overtures and such conduct made it manifest that the purpose of the invitation was that the boy and the appellant should act indecently together:—*Held*, the invitation and the meeting were overt acts, and when they were considered in the light of the circumstances in which the invitation was issued and the meeting took place those acts were capable of being attempts to procure the boy to commit an act of gross indecency with the appellant. R. *v.* Cope (1921) (86 J.P. 78), applied. (R. *v.* Miskell. C-M.A.C.) ... 113

13. (i) Housebreaking; constructive breaking; entry to house obtained by trick.
(ii) Practice; arraignment; indictment containing several counts; counts to be put separately and separate plea taken on each count.—The appellant, on coming to a house, falsely represented to the householder that he was a servant of the B.B.C. authorized to locate disturbances on the wireless, and the householder, believing that what he said was true, admitted him to the house and he stole a handbag therein:—*Held*, that, as the appellant had obtained entry to the house by means of a trick, there was a constructive breaking sufficient to support a charge of housebreaking. *Per curiam*: Where a prisoner is charged on an indictment containing more than one count, each count should be put separately to him and his plea should be taken separately on each count as it is put to him. Where the counts are alternative, the first of the alternative counts should be put separately to the prisoner, and, if he pleads Guilty to that, there is no need to put the further alternative count; but, if he pleads Not Guilty to the first of the alternative counts, the next alternative count should be put separately and a separate plea taken. (R. *v.* Boyle. C.C.A.) ... 481

14. Indictment; embezzlement; general deficiency; misappropriation of small unidentifiable sums over long period.—In the ordinary case, where it is possible to trace individual items and prove embezzlement thereof, a count alleging a general deficiency ought not to be included in an indictment, but where the individual items cannot be traced and the evidence for the prosecution makes it clear that there has been

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the embezzlement of either the whole or part of a general balance at one time, it is proper to charge the embezzlement of a general balance on a day between specified dates. R. *v.* Balls (1871) (35 J.P. 820) applied. R. *v.* Lawson (1952) (116 J.P. 195) approved. (R. *v.* Tomlin. C.C.A.) 354

15. Larceny; embezzlement; fraudulent conversion; company secretary; cheques drawn on company's account handed to secretary; name of payee to be filled in by secretary; name of creditor of secretary inserted in some cases; company's account ultimately debited with amounts of cheques; cheques cashed by creditor and proceeds handed to secretary in other cases; Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 5 (2).—The appellant, who was the secretary of a company, used to receive cheques signed by two directors, which it was his duty to countersign and complete by inserting the name of the appropriate payee, and then to hand the cheque to the payee. In a number of cases he inserted, instead of the proper payee, the name of the banker of a creditor of his own and handed the cheque to his creditor, the company's account being ultimately debited with the amount of the cheque. In other cases he made cheques payable to the bank of one S. and obtained in exchange from S. cash, which he appropriated. He was convicted in each case of larceny of money (the proceeds of the cheques) the property of the company:—*Held*, (i) that, with regard to the cheques other than those cashed by S., the money in respect of which the appellant caused the company's account to be debited was the money, not of the company, but of the company's bankers; that there had been no asportation by the appellant of the money; and that the convictions on those counts must, therefore, be quashed; (ii) that, with regard to the cheques cashed by S., the money received by the appellant was received by him for and on behalf of the company, and that, when he appropriated the money, he was guilty of embezzlement; that, under s. 44 (2) of the Larceny Act, 1916, on a charge of larceny it was open to the jury to find a verdict of Guilty of embezzlement; and that in these cases the court would exercise its powers under s. 5 (2) of the Criminal Appeal Act, 1907, and substitute a verdict of Guilty of embezzlement. *Per curiam*: With regard to the first-mentioned set of cheques, the appropriate charge would have been fraudulent conversion of the cheques. (R. *v.* Davenport. C.C.A.) 241

16. Obscene libel; test of obscenity; comparison with other publications not to be permitted.—On a charge of publishing an obscene libel the test of obscenity to be applied today is that laid down in R. *v.* Hicklin (1868) (32 J.P. 533), namely, "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall." Regard should be had only to the publications charged. Comparison of these with other publications which had not been the subject of charges should not be permitted. Dicta of the Lord Justice-General (LORD COOPER) in Galletly *v.* Laird, M'Gown *v.* Robertson (1953, S.C. (J.), 16, 27) adopted. (R. *v.* Reiter and Others. C.C.A.) 262

17. Obscene publication; seizure with view to destruction; duty of justices to read and look at publications; limits of duty of prosecution; burden of proof on occupier of premises where publications seized; Obscene Publications Act, 1857 (20 and 21 Vict., c. 83), s. 1.—Where

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publications alleged to be obscene have been seized under s. 1 of the Obscene Publications Act, 1857, and brought before justices, it is the duty of the justices to decide whether the publications are obscene or not, and they can decide this only by reading or looking at the publications themselves. It is not the duty of the prosecution to read particular passages of books alleged to be obscene or to state in what respect they contend that pictures or postcards are obscene unless the justices ask the prosecution to address them or to point out some particular matter. Where the owner of premises where publications alleged to be obscene have been seized appears in answer to a summons issued against him under s. 1 of the Act of 1857 the onus is on him to show cause why the publications should not be destroyed. (Thomson *v.* Chain Libraries Ltd. Q.B.D.) 395

18. Obscene publications; tests of obscenity; tendency to corrupt and deprave according to the standards of the present day.—In applying the test of obscenity laid down in Scott *v.* Wolverhampton Justices (1868) (32 J.P. 533) the jury must decide whether the tendency of any publication alleged to be obscene is to corrupt and deprave those whose minds today are open to immoral influences and into whose hands the publication may fall. Accordingly, in deciding whether a recently published novel, admittedly absorbed with the sex relationship of man and woman and purporting to describe contemporary life, is an obscene libel, it is necessary to take into account the changed approach to the question of sex since Scott *v.* Wolverhampton Justices (*supra*) was decided. A book is not obscene merely because it is in bad taste or because it is an undesirable book. (R. *v.* Martin Secker Warburg, Ltd. and Others. C.C.C.) 438

19. Offensive weapon; having in public place; reasonable excuse; air rifle obtained in shooting gallery for lawful purpose; use for unlawful purpose; Prevention of Crime Act, 1953 (1 and 2 Eliz. 2, c. 14), s. 1.—The appellant entered a public shooting gallery in the company of a woman and obtained an air rifle to fire at a target. In a moment of anger he fired at the woman and wounded her. He was convicted of carrying an offensive weapon without reasonable excuse in a public place, contrary to s. 1 of the Prevention of Crime Act, 1953:—*Held*, that, as the appellant had originally a lawful excuse for carrying the rifle, the subsequent unlawful use of it by him did not constitute the offence charged, and the conviction must, therefore, be quashed. (R. *v.* Jura. C.C.A.) 260

20. (i) Rape; by husband on wife; no separation agreement or order in force; divorce petition presented by wife. (ii) Assault occasioning actual bodily harm; enforcement of husband's marital rights; mental injury; Offences against the Person Act, 1861 (24 and 25 Vict., c. 100), s. 47.—In January, 1952, the wife left the husband, but did not apply for a separation order or for an order of judicial separation, and there was no separation agreement between the parties. In January, 1953, she presented a petition for divorce on the ground of the husband's adultery. On May 21, 1953, before the petition was heard, the husband had intercourse with her against her will. He was alleged to have used force against her, and, according to the evidence, she was in a hysterical and nervous condition afterwards. The husband was charged on indictment with rape and with assault occasioning actual bodily harm. On a submission by the defence that there was no case to answer:—*Held*, (i) the fact that the wife had left the husband

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and had presented a petition for divorce did not amount to a revocation of the consent to marital intercourse impliedly given by her at the time of the marriage, and, as the implied consent had not been revoked either by an act of the parties or by any order or decree of a court, the husband could not be guilty of rape. R. *v.* Clarence (1888) (53 J.P. 149), considered. Principle in R. *v.* Clarke ([1949] 2 All E.R. 448), applied. (ii) " assault occasioning actual bodily harm " included an assault which resulted in an injury to the state of a person's mind for the time being; although the husband had a right to marital intercourse, he was not entitled to use force or violence for the purpose of exercising that right; and, if he did, he was guilty of an assault. (R. *v.* Miller. Winchester Asz.) 340

21. Recent possession of stolen property ; counts to be included in indictment; summing up; verdict.—Where a prisoner is found in possession of recently stolen property, and, although there is no positive evidence of stealing, the evidence is as consistent with larceny as with receiving, the indictment should include counts for each offence. The jury should be directed that it is open to them to convict of larceny, and that it is for them to determine whether the prisoner was the thief or a receiver, being reminded that a person connot receive from himself. Where the indictment contains alternative counts for larceny and for receiving and the jury convict on one of these counts, they should be discharged from returning a verdict on the other count. (R. *v.* Seymour. C.C.A.) 311

22. Sentence; preventive detention; prisoner under 30 at date of offence, but over 30 at date of sentence; Criminal Justice Act, 1948 (11 and 12 Geo. 6, c. 58), s. 21 (2).—A prisoner who is under 30 years of age at the date of the commission of the offence, but over 30 when he is convicted and sentenced is eligible for a sentence of preventive detention. (R. *v.* Fallows. C.C.A.) 254

23. Trial; plea of guilty; application to withdraw plea before sentence; discretion of judge.—When a prisoner who has pleaded Guilty, but has not been sentenced, applies to the judge for leave to withdraw his plea, it is entirely a matter for the discretion of the judge whether he shall be allowed to do so. Once sentence has been passed, a judge has no power to allow a plea to be withdrawn. R. *v.* Sell (1840) (9 C. & P. 346) and R. *v.* Plummer (66 J.P. 647) approved. R. *v.* Blakemore (1948) (33 Cr. App. R. 49) not followed. (R. *v.* McNally. C.C.A.) 399

E

EDUCATION

1. Pupil at school; hair infested with vermin; pupil living with father and mother; condition due to neglect of mother; proceedings against mother—" parent "; Education Act, 1944 (7 and 8 Geo. 6, c. 31), s. 54 (6).—A pupil at a school whose hair had been cleansed by order of the medical officer of health under a compulsory cleansing order, under s. 54 (3) of the Education Act, 1944, was found to have his hair again infested with vermin. The boy lived with his father and mother, and the condition of his hair was due to the mother's neglect. Proceedings were taken against the mother, as the child's " parent," under s. 54 (6) of the Act, and the justices convicted her:—*Held*, that " parent " in s. 54 (6) included the mother, and the conviction was right. London County Council *v.* Stansell (1935) (100 J.P. 54) doubted and not applied. (Plunkett *v.* Alker. Q.B.D.) 156

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2. School attendance; failure of pupil to attend regularly; excuse for non-attendance; school not within "walking distance" of child's home; "nearest available route"; test for determining; part of route unsafe for unescorted children; Education Act, 1944 (7 and 8 Geo. 6. c. 31), s. 39 (5).—By s. 39 (2) (c) of the Education Act, 1944, a child shall not be deemed to have failed to attend regularly at school "if the parent proves that the school at which the child is a registered pupil is not within walking distance of the child's home . . ." By s. 39 (5) "walking distance" means, according to the age of the child, two or three miles measured by "the nearest available route." On the prosecution of the father of a child under s. 39 (1) of the Act, which makes it an offence on the part of a parent if a child of compulsory school age fails regularly to attend school, it was established that the direct route from the child's home to the school was within the distance prescribed in s. 39 (5), but that part of the route was unsafe for unescorted children, as it contained a dangerous crossing. The justices convicted the parent:—*Held*, that, as distance and not safety was the test prescribed for determining "the nearest available route," the school was within "walking distance" of the child's home, and the conviction was, therefore, right. (Shaxted *v.* Ward. Q.B.D.) 168

3. Schoolmaster; negligence; child at nursery school; permitted to run on to highway; injury to vehicle driver in avoiding child; liability of education authority.—A child aged four years, while at a nursery school, was made ready to go out for a walk and was left by one of the mistresses with another child in a classroom. During the mistress's absence the child left the classroom and ran on the highway, causing the driver of a lorry to swerve violently to avoid him with the result that the lorry struck a telegraph post and the driver was killed. In an action for damages for negligence by the widow of the driver against the defendants, the education authority:—*Held*, the teacher owed a duty of care, not only to the child who was permitted to stray on the highway, but also to those persons who might seek to avoid causing injury to the child and thereby themselves suffer injury; the accident to the lorry driver might well have been anticipated; the teacher was in breach of the duty she owed to him; and, therefore, the defendants were liable to the plaintiff in damages. (Lewis *v.* Carmarthenshire County Council. C.A.) 51

ELECTRICITY

Electricity supply; faulty installation; wife of consumer electrocuted; liability of electricity board; failure to test earthing arrangements; negligence; breach of statutory duty; Electricity Supply Regulations, 1937, reg. 27 (a).—The first defendant, an electrical contractor, installed at the plaintiff's house an electric boiler together with a new circuit for the same, but he failed to provide a fully efficient earthing system for the circuit. The second defendants, the electricity board supplying electricity to the house, connected up the new circuit to their supply, but, before so doing, although they carried out certain tests, they did not test to ascertain whether or not the earthing system was adequate. About three months after the installation of the boiler its insulation became defective as a result of which electricity escaped into the metal shell of the boiler and gave the plaintiff's wife a violent electric shock as a result of which she died. If there had been a proper earthing system, no accident would have happened. In an action by the plaintiff claiming damages in respect of his wife's death the first

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defendant was held liable to the plaintiff, but as regards the liability of the second defendants:—*Held*, (i) reg. 27 (a) of the Electricity Supply Regulations, 1937, imposed no obligation on the second defendants to carry out any inspection or test of the new installation before commencing to give a supply of electrical energy, nor was it possible to say on the facts that they assumed any obligation to the plaintiff's wife; (ii) to say that the second defendants before carrying out the potentially dangerous operation of sending electricity into the installation in the house should make sure that the electrical equipment was fully prepared to receive it, and, therefore, that they were responsible for what the plaintiff's contractor had done or omitted to do, would be carrying the kind of tortious liability envisaged in Donoghue *v.* Stevenson ([1932] A.C. 562) too far; and, therefore, the action failed as regards the second defendants. (Sellars *v.* Best and Another. York Asz.) 326

ENTERTAINMENTS DUTY

Exemption; "recitation"; "music hall or other variety entertainment"; humorous "patter" with music; light musical concerts; performance dominated by variety performer; Finance Act, 1946 (9 and 10 Geo. 6, c. 64), s. 8 (1); Finance Act, 1952 (15 and 16 Geo. 6 and 1 Eliz. 2, c. 33), s. 3 (1).—A local authority arranged a series of entertainments on premises belonging to them. The entertainments were presented on an open stage without scenery, and comprised mostly musical performances, vocal and instrumental. The entertainments fell into three groups: (a) those which, although largely musical, included performances partially musical and partially consisting of monologue and the telling of humorous stories, or dialogue, of amusing character, described as "patter", given by artistes well-known in the field of variety, light entertainment and the music hall; (b) those wholly musical, which could be described as light musical concerts, and which did not include a performance which could be called a variety or music hall act; and (c) those dominated by a well-known performer in the variety theatre, doing the act which he or she gave in the variety theatre. The local authority claimed exemption from entertainments duty in respect of the entertainments:—*Held*, (i) the non-musical parts of entertainments (a) did not constitute "recitation" by the performers within the Finance Act, 1946, s. 8 (1), and, the non-musical parts not falling within any other head of s. 8 (1), the local authority was not entitled to exemption in respect of those entertainments; (ii) entertainments (b) were not "music hall or other variety entertainment" within the Finance Act, 1952, s. 3 (1), and, therefore, were not by that sub-section excluded from the operation of s. 8 (1) of the Act of 1946, which accordingly exempted them from duty; (iii) entertainments (c) were variety entertainments within s. 3 (1) of the Act of 1952 and no exemption was due in respect of them. (Eastbourne Corporation *v.* Commissioners of Customs and Excise. Ch.D.) 82

F

FACTORIES AND WORKSHOPS

Fire; fireman electrocuted while fighting fire; "persons employed"; Regulations for Generation, Transformation, Distribution and Use of Electrical Energy in Premises under the Factory and Workshop Acts, 1901 to 1907 (S.R. & O., 1908, No. 1312), reg. 9; Factories Act, 1937, s. 60 (1), as amended by Factories Act, 1948 (c. 55), s. 12 (1),

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Fire; negligence; fireman electrocuted; liability of occupiers; invitee; mains supply of electricity to lighting circuit not cut off; obsolete type of mechanism; unusual danger.—Contrary to reg. 9 of the Regulations for the Generation, Transformation, Distribution and Use of Electrical Energy in Premises under the Factory and Workshop Acts, 1901, 1907, 1908, the electric supply in the lighting circuit of a factory occupied by the first defendants was controlled by ordinary tumbler switches, similar to those in use in a house, adjoining the main switchboard. The connexions from these tumbler switches to the master switchboard had been transposed, so that when they were switched on current still flowed from their live wire through the neutral wire of the master switch, to the earth wire throughout the circuit, after the master switch had been switched off. This had not been discovered by the defendant electricity board in any tests after they had done work at the factory in the 1930's, 1946, and 1950, and the obsolete nature of the tumbler switches was not pointed out to the occupiers of the factory, the defendant firm, by the board. The factory manager, who had been with the firm 20 years, and knew that the tumbler switches did not serve lighting points in the building, but not that they were the main switch, directed firemen summoned to a fire at the factory to the main switchboard and the master switch, which they switched off. But he did not warn them that the tumbler switches were main switches, even after a complaint that the electricity was not all switched off, and they did not realise this, excusably as it was found. One of the firemen was electrocuted, and his widow brought an action against the two defendants, both of whom the trial judge found guilty of negligence. He found the defendant firm also guilty of breach of statutory duty under the regulations. He apportioned the responsibility for the damage as to ninety *per cent.* against the defendant board and as to ten *per cent.* against the defendant firm. In an appeal by the defendant firm, *Held*: (i) the defendant firm were not liable for their breach of statutory duty under the electricity regulations in respect of the fireman's death, since he was not a person for whose benefit the regulations were made, not being of the class of "persons employed," to protect whom power to make the regulations was conferred by s. 60 (1) of the Factories Act, 1937, as amended by s. 12 (1) of the Factories Act, 1948. Decision of BARRY, J. (1953) (117 J.P. 369), on this point, reversed; (ii) the apportionment of responsibility for the damage against the defendant firm must be upheld, notwithstanding the negligence of the defendant board in not discovering the defect in the connexions and in not informing the defendant firm that the tumbler switches were obsolete, which was the primary cause of the accident, since, having regard to the requirements of reg. 9 of the electricity regulations, it was the duty of the defendant firm to know where their main switches were, and their manager was negligent in not knowing that the tumbler switches were a main switch and in not giving warning of the danger arising from the risk of their being overlooked, through not being the usual type, by the firemen, who were invitees. Judgment of BARRY, J. (1953) (117 J.P. 369) affirmed. (Hartley *v.* Mayoh & Co. and Another. C.A.) 178

FIRE SERVICE

1. Exercise of disciplinary power; refusal of fireman to clean uniform of officer; fireman cautioned by chief officer; *certiorari*; Fire Services (Discipline) Regulations, 1948 (S.I., 1948, No. 545), reg. 5 (1).—The court will not interfere by an order of *certiorari* with the exercise

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of a disciplinary power in a service such as a fire brigade. Observations of LORD GODDARD, C.J., in R. *v.* Metropolitan Police Comr. *Ex parte* Parker (1953) (117 J.P. 440), applied. (*Ex parte* Fry. C.A.) ... 313

2. Injury to fireman; liability of fire authority; injury by jack insecurely fixed in vehicle.—The plaintiff, a fireman employed by the defendants, the county fire authority, was travelling in the back of a lorry to the scene of an accident. In the lorry there was a jack weighing between two and three hundredweights. The jack was not fixed in any way, it not being possible as the lorry was not fitted for it, the usual vehicle for carrying the jack not being available. The driver of the lorry was forced to apply his brakes suddenly which caused the jack to move forward and strike and injure the plaintiff:—*Held*, apart from statutory requirements, an employer was bound to exercise reasonable care to avoid exposing his employees to unnecessary risks, but what was "reasonable" depended on the circumstances and nature of the employment; a fireman voluntarily engaged himself in a type of employment involving much greater risks than did other types of employment, and fire authorities were entitled to require firemen to undertake far greater risks than those encountered in other employments; in the circumstances the defendants were justified in using the lorry, and, speed being an essential requirement of the fire service, the plaintiff must have been prepared to take risks which other persons travelling in motor vehicles would not be required to take and, accordingly, the plaintiff had not established that the accident was due to the defendants' negligence, and his claim must fail. (Watt *v.* Hertfordshire County Council. Q.B.D.) 97

3. Injury to fireman; liability of fire authority; injury by jack insecurely placed in vehicle.—A jack lent by London Transport Executive to the defendants' fire station, which was intended to be on call in case of need but was rarely used, weighed between two and three hundredweight and stood on four wheels, two of them castored. While the only vehicle at the station specially fitted to carry it was properly out on other service, an emergency call was received at the station to an accident two or three hundred yards away, where a woman had been trapped under a heavy vehicle. In accordance with the orders of the officer in charge, the jack was loaded on to the only other vehicle capable of carrying it, a lorry on which there was no means of securing it. While driving the lorry to the scene of the accident with firemen employed by the defendants and the jack, the driver had to brake suddenly, causing the jack to move and injure a fireman:—*Held*, the defendants were not liable for damages for negligence to the fireman, since they were under no duty to have available at all times a vehicle specially fitted to carry the jack; the risk taken by the fireman was such as would be normally undertaken by members of the fire service; and in relation to the end to be achieved it was not unduly great. Decision of BARRY, J. (*ante*, p. 97) affirmed. (Watt *v.* Hertfordshire County Council. C.A.) 377

FISHERIES

Salmon net; "fixed engine"; light anchors acting as brake on drifting net; Salmon and Freshwater Fisheries Act, 1923 (13 and 14 Geo. 5, c. 16), s. 11 (1), s. 92 (1) (c).—Light T-shaped anchors were attached to a salmon net for the purpose of acting as a brake or drag, the net being intended to drift, and in fact actually drifting with the tide:—*Held*, that the net was not a "fixed engine" within the meaning of

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s. 11 (1) of the Salmon and Freshwater Fisheries Act, 1923, as it was neither "fixed" nor "secured by anchors" nor "made stationary in any other way" within the definition of "fixed engine" contained in s. 92 (1) of the Act. (Percival *v.* Stanton and Another. Q.B.D.) 171

FOOD AND DRUGS

Sale of food unfit for human consumption; bread; proceedings taken against bakers as manufacturers; information dismissed as misconceived; Food and Drugs Act, 1938 (1 and 2 Geo. 6, c. 56), s. 9 (1) (a), s. 9 (2), s. 83 (3).—A bread roll which was being prepared in a canteen by being cut into sandwiches was found to contain part of a smoked cigarette. Proceedings were taken against the original bakers as manufacturers under s. 83 (3) of the Food and Drugs Act, 1938, for selling a roll which was intended for, but was unfit for, human consumption, contrary to s. 9 of the Act. Before the defendants were called on to plead, it was contended on their behalf that the prosecutor should elect whether he was proceeding under s. 9 (1) (a) or s. 9 (2) of the Act. The prosecutor having stated that, as the prosecution was brought under s. 83 (3) of the Act, s. 9 (1) (a) must be relied on, the magistrate ruled that the prosecutor should elect, and that, in view of his contention, he must be deemed to have elected to proceed under s. 9 (1) (a), and the summons was, accordingly, amended. At the close of the case for the prosecution the magistrate dismissed the information on the ground that the prosecution was misconceived in that, contrary to the intention of the Act, the proceedings had been brought under s. 9 (1) (a) instead of under s. 9 (2):—*Held*, that, the only question being whether the roll was fit for human consumption, and, if so, whether the defendants were liable as manufacturers, the proceedings had been correctly brought under s. 83 (3) and s. 9 (1) (a) of the Act, and that the case must be remitted to the magistrate for him to hear and determine. (Fisher *v.* Barrett & Pomeroy (Bakers), Ltd. Q.B.D.) 124

H

HIGHWAYS

1. Highway authority; ownership of land; liability to bear apportioned part of tithe redemption annuity; Tithe Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 43), s. 10 (1), s. 17 (1).—Parish tithes were commuted under the Tithe Acts in 1847, and the tithe apportionment, which was confirmed on August 27, 1847, apportioned a tithe rentcharge of £1 3*s.* 11*d.* on a certain tithe area. When the tithe rentcharge was extinguished by s. 1 of the Tithe Act, 1936, an annuity of £1 1*s.* 11*d.*, calculated in accordance with the provisions of s. 3 (2) of that Act, became payable in respect of the tithe area. No question arose as to the amount of this annuity, which hitherto had been paid by the owners of the whole of the tithe area subject to such interests as the highway authority had in the highways which existed within the area. As from 1936, by the County of Chester Review Order, 1936, made by the Minister of Health, the highways in the tithe area were vested in the defendant council who then became the highway authority:—*Held*, a highway authority in whom a highway has become vested is an "owner" of such highway within the meaning of s. 17 (1) of the Tithe Act, 1936, and, accordingly, the council was the "owner" of the land over which the highways in question passed and was liable, under s. 10 (1) of the Act, to bear an apportioned share of the tithe redemption annuity payable in respect of the tithe area. (Tithe Redemption Commission *v.* Runcorn Urban District Council and Another. Ch.D.) 19

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2. Right of Way; quarter sessions; case stated; application to quarter sessions for declaration; original jurisdiction; no power to state Case by agreement under Baines' Act; National Parks and Access to the Countryside Act, 1949 (12, 13 and 14 Geo. 6, c. 97), s. 31 (1); Quarter Sessions Act, 1849 (12 and 13 Vict., c. 45), s. 11.—Section 30 of the National Parks and Access to the Countryside Act, 1949, provides for the preparation by county councils of provisional maps showing public rights of way within their districts, and s. 31 (1) gives an objector a right to apply to quarter sessions for certain declarations negativing or limiting a right of way shown on a provisional map. The jurisdiction conferred on quarter sessions by s. 31 (1) is an original jurisdiction and not one arising by way of an appeal, and, accordingly, s. 11 of the Quarter Sessions Act, 1849, has no application and the High Court has no jurisdiction to hear a Case stated by agreement of the parties under s. 11 of the Act of 1849 in relation to an application to quarter sessions under s. 31 (1) of the Act of 1949. (British Transport Commission *v.* Worcestershire County Council. Q.B.D.) ... 368

HOUSING

1. Action by tenants; representative action; suit on behalf of "numerous persons having some interest"; proposal to increase rents of some tenants; R.S.C., Ord. 16, r. 9.—In accordance with their obligations under the Housing Act, 1936, Part V, the defendants, as local authority, provided houses for over 13,000 tenants under weekly tenancy agreements. On or about June 8, 1953, the defendants resolved to introduce a differential rent scheme which involved an increase of rent according to the ability to pay of each tenant having regard to his financial circumstances. Under the scheme some tenants would have to pay an increase of 12*s.* 6*d.* per week, whilst the rents of other tenants would remain unchanged. The plaintiffs, being four tenants and "suing on behalf of themselves and all other tenants of houses provided by the defendants under Part V of the Housing Act, 1936," issued a writ against the defendants, claiming a declaration that the rent scheme was *ultra vires* and void, and an injunction to restrain the defendants from carrying out the scheme. On a motion by the defendants to set aside the writ:—*Held*, to bring the case within the provisions of R.S.C., Ord. 16, r. 9, and to enable the action to be constituted as a representative action the plaintiffs must show that all the members of the class on whose behalf they sued had a common interest in a common subject matter, that all had a common grievance, and that the relief was in its nature beneficial to them all; the scheme by its nature involved the affluent "subsidizing" the less affluent tenants, and so, apart from those in an intermediate position, there were two distinct classes of tenants whose interests were in conflict, *viz.*, those who would benefit by having to pay no increase and those who would have to pay the maximum increase of rent; without deciding whether or not the thirteen thousand tenants had a common interest, the relief sought was not in its nature beneficial to them all; and, therefore, R.S.C., Ord. 16, r. 9, could not apply, but the writ would be amended by striking out the reference that the plaintiffs were suing in a representative capacity so that they would proceed as individuals and the action be treated as a test action. Dictum of LORD MACNAGHTEN in Bedford (Duke) *v.* Ellis ([1901] A.C. 7), applied. (Smith and Others *v.* Cardiff Corporation. C.A.) 33

2. Compulsory purchase order; acquisition of dwelling-house as part of estate; intention to demolish; duty of acquiring authority to convert

HOUSING—*continued* PAGE

house for housing purposes; Housing Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 51), s. 73 (a), (b), s. 79 (4).—On May 11, 1948, the London County Council, under the Housing Act, 1936, Part V, made an order for the compulsory purchase of land for development as a housing estate, the order being later confirmed in the absence of objectors. The order related to some 16 acres of land which included a dwelling-house (with land adjoining) belonging to the plaintiff. The plaintiff brought an action for an injunction to restrain the council from trespassing on her land and a declaration that they were not entitled to demolish the dwelling-house or otherwise interfere with it:—*Held*, as the plaintiff's house had been acquired by the council as part of land acquired as a site for the erection of houses for the working classes under s. 73 (a) of the Housing Act, 1936, and had not been acquired under s. 73 (b) as a house which was, or could be made, suitable as a house for the working classes, the council were not under a duty to use it for the occupation of the working classes, or, under s. 79 (4), to secure its alteration to make it suitable for such occupation, and were entitled to demolish it in accordance with their scheme, and the action must fail. Uttoxeter Urban District Council *v.* Clarke (1952) (116 J.P. 328), applied. (Attridge *v.* London County Council. Q.B.D.) 387

3. Compulsory Purchase; application to quash order; need to serve notice on statutory tenant; "occupier"; Acquisition of Land (Authorisation Procedure) Act, 1946 (9 and 10 Geo. 6, c. 49), sch. I, para. 3 (1) (b).—A statutory tenant is an "occupier" within the meaning of the Acquisition of Land (Authorisation Procedure) Act, 1946, sch. I, para. 3 (1) (b). Consequently, a notice in the prescribed form must (except in so far as the confirming authority directs in a particular case that para. 3 (1) (b) shall not apply) be given a compulsory purchase order to every statutory tenant of land comprised in the order before the order is submitted to the confirming authority under para. 1 of sch. I to the Act. (Brown *v.* Ministry of Housing and Local Government and Others. Ford *v.* Same. Q.B.D.) ... 143

4. Requisition; defective steps of requisitioned house; injury to licensee; liability of requisitioning authority.—On October 5, 1951, the plaintiff, who had been visiting the occupier of part of a house which had been under requisition by the defendants since 1946, fell and broke her leg while descending the steps from the front door after dark, one of the steps being defective. The defendants had knowledge of this fact, and the court found that a reasonable man who had had that knowledge would have appreciated the danger involved. The court found further that the defective step was not obvious to the plaintiff:—*Held*, the plaintiff was in the position of a licensee; in the circumstances a reasonable householder would have warned the plaintiff of the danger arising from the steps; the fact that the defendants were not in actual occupation of the house did not relieve them of their responsibility; and, therefore, they were liable to the plaintiff in damages. (Hawkins *v.* Coulsdon and Purley Urban District Council. C.A.) 101

5. Requisition; requisitioned premises; licensee injured through concealed danger; liability of requisitioning authority; unsafe premises; occupation by family of five; authority's agreement with husband; injury to wife.—The defendant council, as the requisitioning authority under the Defence (General) Regulations, 1939, allotted rooms in a requisitioned house to the plaintiff's husband. An assessment form

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signed by the plaintiff on behalf of her husband and supplied to the council specified the family for which accommodation was required (the plaintiff, her husband, and their three children) and the total of the family's income, and, under an agreement signed by the husband, the council, in return for a weekly payment equal to one fifth of the total family income, gave their "licence and authority for the occupier to occupy" the main rooms "and to use" other rooms "until such occupation is determined". There was a provision that the occupier (defined as the plaintiff's husband) "will permit the council or its officers or agents at all reasonable times of the day to enter into and upon the said premises and to examine the state and condition thereof and to effect any repairs" considered necessary. Following a report by the plaintiff to the council's rent collector of a crack and a bulge in the kitchen ceiling two men inspected and tested it on behalf of the council, but they, apparently, found it "all right" and nothing was done. Six months later part of the ceiling fell and injured the plaintiff:—*Held*, (i) the agreement for the occupation and use of the rooms was not a tenancy agreement, but an agreement for a licence to the whole family to use them: Southgate Borough Council *v.* Watson (1944) (108 J.P. 207) and Errington *v.* Errington & Woods ([1952] 1 All E.R. 149), applied; (ii) the council owed a duty of care towards all the members of the family as licensees, since, as requisitioning authority, the council had remained in possession of the rooms, and were responsible for repairs: Hawkins *v.* Coulsdon & Purley Urban District Council (1954) (118 J.P. 101), applied; (iii) the council were liable for breach of duty towards the plaintiff, in that they had been negligent in failing to remedy the danger from the state of the ceiling after warning: London Graving Dock Co., Ltd. *v.* Horton ([1951] 2 All E.R. 1), distinguished. (Greene *v.* Chelsea Borough Council. C.A.) 346

HUSBAND AND WIFE

1. Adjournment of complaint; different justices at different hearings of same complaint; justice not manifestly seen to be done; Magistrates' Courts Act, 1952 (15 and 16 Geo. 6 and 1 Eliz. 2, c. 55), s. 98 (6).—On October 11, 1950, an order for weekly payments was made in the wife's favour under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949. On January 13, 1954, the husband sought a reduction in the amount of the weekly payments. The complaint was heard on February 3, 1954, by three justices, when the husband gave evidence in chief and the justices adjourned the case until February 17 to enable him to produce certain accounts. The same three and two additional justices sat at the adjourned hearing on February 17. A further adjournment was granted to enable the wife's solicitor to examine the accounts, but the wife gave her evidence at the hearing on February 17 to avoid the need for her further attendance at court. The case was concluded at the third hearing on March 3, and the three justices then sitting, of whom two were the two additional justices on February 17 and the third had not sat either on February 3 or February 17, dismissed the husband's complaint. On appeal by the husband;—*Held*, it was clear from the statement of their reasons that the three justices who made the order of March 3, dismissing the husband's complaint, had acted on evidence part of which had been given by the husband at the first hearing on February 3, at which none of the three had been present; not only had the justices failed to comply with the mandatory provisions of the Magistrates' Courts Act, 1952, s. 98 (6), requiring justices composing

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a court to be " present during the whole of the proceedings ", but, even more important, justice had not manifestly been seen to be done; and the husband's complaint would be remitted for re-hearing by a fresh panel of justices where business would not be conducted by the same justices' clerk. (Munday *v.* Munday. P.D. & A.) 434

2. Appeal; failure of justices to supply to High Court statement of reasons for their decision; questions directed to justices; Matrimonial Causes Rules, 1950 (S.I., 1950, No. 1940), r. 71 (3). (Starkie *v.* Starkie. P.D. & A.) 17

3. Desertion; constructive desertion; expulsive words; previous cruelty charge dismissed; repetition of evidence relating to expulsive words; estoppel.—On April 2, 1954, the wife left the matrimonial home, and, on her complaint to the justices that the husband had been guilty of persistent cruelty towards her, a summons was issued against him. On April 23, 1954, the complaint was heard. The wife gave evidence of physical violence and quarrels and produced to the justices two notes, in one of which her husband had told her to " clear out " and in the other to " get out ". After producing the latter note the wife said in evidence: " I said I would go in my time, not his. He kept on saying ' pack your bags and get out '. I thought it was not any good going on like this so I left." She admitted that the notes were written because she had demanded that the husband put in writing what, she alleged, were his frequent words to the same effect. She alleged that this course of conduct by the husband had caused injury to her health. No other evidence was called for the wife, and the complaint was dismissed on a submission that the husband had no case to answer. On May 11, 1954, a further summons was issued against the husband on the wife's complaint that he had deserted her. As particulars of desertion the wife's solicitor stated by letter dated May 27, 1954, that, apart from the notes " clear out " and " get out " signed by the husband, he drove her from the matrimonial home by expulsive words and conduct. At the beginning of the hearing of the complaint on May 28, 1954, the wife produced again the second note, and the husband objected that she was attempting to re-open the hearing which had taken place on April 23, 1954. The justices ruled that the evidence was inadmissible. The wife was, therefore, unable to adduce any evidence which would be accepted as admissible and her complaint was dismissed. On appeal:—*Held*, the evidence given by the wife on April 23, 1954, of expulsive words was given as part of the background of her case; in so far as it was specifically directed to any issue, it was directed to the possible effect on her health; and the dismissal on that date of her charge of cruelty did not estop her from adducing appropriate evidence on the later charge of desertion, even though that evidence had been given on the charge of cruelty; and the case must be remitted to the justices for re-hearing. Foster *v.* Foster (1953) (117 J.P. 577), applied. (Cooper *v.* Cooper. P.D.A.) ... 549

4. Desertion; termination; decree *nisi* of nullity; effect on deserting spouse's mind.—The parties lived together in a house belonging to the wife. In the autumn of 1946 the wife told the husband to leave the house and on November 26, 1946, he did so. On October 20, 1950, the husband presented a petition for a decree of nullity and on November 8, 1951, a decree *nisi* was granted in his favour. The wife appealed, and on March 12, 1952, the Court of Appeal allowed the appeal and set aside the decree *nisi*. On January 24, 1953, the husband presented a petition

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for dissolution of the marriage on the ground of the wife's desertion from the date of his eviction by her in 1946 until the date of the petition (January 24, 1953). The wife denied desertion, and pleaded that, if ever she had been in a state of desertion, the desertion had been terminated by offers of reconciliation which had been refused by the husband and that from November 8, 1951 to the date when the decree *nisi* was set aside the parties were living apart by reason of the decree *nisi* :—*Held*, although a decree of judicial separation, or, which was equivalent, a separation order of a court of summary jurisdiction, prevents the continuance of desertion after the date of such decree or order, the making of a decree *nisi* does not of itself put an end to desertion and it is a question of fact in each case whether a period of desertion has been terminated: observations of LORD ROMER in Cohen *v.* Cohen ([1940] 2 All E.R. 339), applied: Fender *v.* Mildmay ([1937] 3 All E.R. 402), distinguished; on the facts, the wife was guilty of desertion in 1946, the pronouncement of the decree of nullity had not affected her mind or conduct, it was not possible to say that the parties were living apart by reason of that decree, and since she had failed to prove a genuine repentance and sincere and reasonable attempts to get the husband back, her state of desertion had not been terminated and the husband was entitled to a decree: observations of LORD ROMER in Pratt *v.* Pratt ([1939] 3 All E.R. 442) and in Cohen *v.* Cohen ([1940] 2 All E.R. 334), applied. Per SIR RAYMOND EVERSHED, M.R.: In cases in which the offending spouse has been guilty of some matrimonial offence in addition to desertion (for example, cruelty) it is, I think, true that the injured spouse may reasonably expect a greater manifestation, a greater proof, of real change of heart extending both to the other offence and to the desertion than in a case in which the only matter at issue is desertion. (W. *v.* W. C.A.) 467

5. Divorce; adultery; evidence; accomplice; need of corroboration.—After the wife had left the matrimonial home a nurse lived there for two years to look after the children, the husband still residing in the house. In a divorce suit brought by the husband on the ground of desertion the wife, in her answer, alleged adultery by the husband, which he denied, the sole evidence of his adultery being given by the nurse who said that she and the husband had constantly committed adultery during the two years. The commissioner who heard the petition held that the court must scrutinize the nurse's evidence carefully, but found that she was a truthful witness, and, he, therefore, rejected the husband's denial and pronounced a decree in favour of the wife on the ground of his adultery:—*Held*, the commissioner's order must be set aside and a new trial ordered, since an adulterer who gave evidence of his own adultery was in the same position as an accomplice in a criminal case, and the commissioner had given no indication that he had directed himself that, in the absence of corroboration, the court should be very slow to act on such evidence. Fairman *v.* Fairman (1949) (133 J.P. 275), approved and applied. (Galler *v.* Galler. C.A.) 216

6. Divorce; desertion; defence—"just cause"; estoppel; pleading based on substantially same matters as relied on to support charges of cruelty in former unsuccessful suit alleging cruelty.—On May 7, 1949, the wife left the matrimonial home. On August 19, 1949, she presented a petition for divorce on the ground of her husband's cruelty. On March 7, 1950, the judge dismissed the petition on the

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ground that, although the wife's health had been affected, that was not due to any matrimonial misconduct by the husband. The husband now presented a petition for dissolution on the ground of the wife's desertion on May 7, 1949, and the wife, by her answer, pleaded "just cause", the matters she relied on in support of this plea being substantially the same as those alleged by her in her unsuccessful petition, on matters which could have been so alleged. In his reply the husband pleaded that in the circumstances the wife was estopped from alleging "just cause":—*Held*, on the facts the matters alleged by the wife could not be of such a grave and weighty character that, even though they did not amount to cruelty, they could be relied on by the wife as just cause for her leaving her husband; but, in any event, just as the wife would not have been entitled in support of a plea of constructive desertion to rely on matters which she had previously alleged unsuccessfully, so she was not entitled to rely on such matters as constituting grave and weighty matters giving her good cause for leaving her husband and preventing him obtaining a decree of restitution of conjugal rights; in the circumstances of the case considerations of public policy and the duty laid on the court by s. 4 (1) of the Matrimonial Causes Act, 1950, did not demand that the court should inquire into the facts alleged by the wife in her answer; and, therefore, the husband was entitled to a decree. (Hill *v.* Hill. P.D. & A.) 163

7. Maintenance; amount; husband in receipt of grant from National Assistance Board.—In 1940 the husband deserted the wife and went to live with another woman by whom he had a child. On November 9, 1950, justices ordered him to pay the wife £3 a week as maintenance. At that time he was earning £8 18*s.* a week. Subsequently, he became unemployed and received a grant of £4 16*s.* 6*d.* a week under the National Assistance Act, 1948. On August 18, 1953, the justices reduced the amount of maintenance to £1 10*s.* a week, ordering the husband to pay 15*s.* a week while he was unemployed, the balance of 15*s.* a week to accrue as arrears:—*Held*, the justices were wrong in fixing a figure which was too high for the husband to pay and ordered part of that figure to accumulate as arrears; in the circumstances, the proper amount to be ordered was 6*s.* a week. (Ivory *v.* Ivory. P.D. & A.) 275

8. Maintenance; ante-dating of order; committal to prison; no direction for accrual of arrears; Magistrates' Courts Act, 1952 (15 and 16 Geo. 6 and 1 Eliz. 2, c. 55), s. 75.—On April 23, 1952, justices dismissed the wife's complaint that the husband had been guilty of wilful neglect to provide reasonable maintenance for her. On February 11, 1953, the Divisional Court allowed the wife's appeal, found the complaint proved, and remitted the summons to the justices to assess the proper amount of maintenance. On August 18, 1953, the justices ordered the husband to pay the wife maintenance at the rate of £5 a week, to take effect from that date, as they held that they had no jurisdiction to ante-date the order. On February 24, 1954, on the wife's complaint, the justices committed the husband to prison in respect of arrears of maintenance at that date:—*Held*, the justices had power to ante-date the order of August 18, 1953, to, at any rate, February 11, 1953, when the Divisional Court found that the wife's complaint had been proved, but, as, on February 24, 1954, the justices had ordered that the husband be committed to prison in respect of the

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arrears of maintenance at that date and had not directed, under the Magistrates' Courts Act, 1952, s. 7, that further arrears of maintenance should accumulate during his imprisonment, it would not now be right, whether as a matter of law or as one of discretion, to ante-date the order of August 18, 1953, and so create further arrears for which in the future the husband might again be committed. (Starkey *v.* Starkey. P.D. & A.) 279

9. Maintenance; application to High Court; "reasonable maintenance"; desertion of wife by husband; wife under no duty to earn; liability of husband.—The parties were married on July 4, 1947. Before the marriage the wife had been employed as a shop assistant. The husband was of independent means and allowed the wife £5 a week for housekeeping. On June 21, 1952, the husband deserted the wife and thenceforth made her weekly payments of £3. The wife applied for an order for her maintenance alleging that the husband had wilfully neglected to provide her with reasonable maintenance. The husband contended that, there being no children and the wife being young, she should return to the position she was in before the marriage and earn her living:—*Held*, the marriage having ended through no fault of the wife, there was no reason why she should return to earning her living in order to reduce the husband's liability to maintain her; in the circumstances, the husband had not provided reasonable maintenance, and she was entitled to an order for the payment after the deduction of tax of £6 a week. (Le Roy-Lewis *v.* Le Roy-Lewis. P.D. & A.) 444

10. Maintenance; charge of cruelty and of adultery against wife; failure of charges; offer by husband to resume cohabitation; refusal of wife; Matrimonial Causes Act, 1950 (14 Geo. 6, c. 25), s. 23 (1).—On January 15, 1951, the husband left the matrimonial home and on January 20, 1951, he wrote to the wife asking her to leave those premises. He filed a petition dated June 13, 1951, for dissolution of the marriage on the ground of the wife's adultery and cruelty, and on December 13, 1951, the petition was dismissed. The husband appealed against the dismissal of the charge of adultery, and on June 16, 1952, the appeal was dismissed. On June 20, 1952, the husband wrote to the wife: "You will no doubt have heard by now that my appeal has been dismissed. The court decided that my suspicions were wrong. As that is the case, let us drop the matter now, once and for all, and I assure you it will never be raised again by me. The house is still here and we really must arrange a meeting and see if we can get together again". The wife refused to meet the husband or to discuss a reconciliation. On a summons by the wife for maintenance under the Matrimonial Causes Act, 1950, s. 23 (1):—*Held*, there being no suggestion that the husband was guilty of a matrimonial offence, the wife had to prove that he had been guilty of such grave and weighty conduct as to make married life impossible; the husband's charges having been heard and disposed of, the wife could not for ever set up the fact that he had made those charges as providing her with just cause for refusing to live with him; the husband's offer in his letter of June 20, 1952, to meet the wife with a view to a reconciliation was genuine in the sense that he was prepared to take her back; the wife's refusal to meet the husband was not justified; and, therefore, he had not wilfully neglected to provide reasonable maintenance. Price *v.* Price (1951) (115 J.P. 468), applied. (Dyson *v.* Dyson. P.D. & A.) 66

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11. Maintenance; committal order against husband; duration; need for renewal yearly; Debtors Act, 1869 (32 and 33 Vict., c. 62), s. 5; Matrimonial Causes (Judgment Summons) Rules, 1952 (S.I., 1952, No. 2209), r. 6 (1).—On December 8, 1950, the registrar made an order in favour of the wife for the payment of interim maintenance by the husband. On October 3, 1952, on the wife's application, a judgment summons was served on the husband in respect of his failure to pay under that order. On March 23, 1953, an order was made under the Debtors Act, 1869, s. 5, committing the husband to prison, the order to be suspended on certain conditions, which were fulfilled. On an application by the wife that the order for commitment be renewed for a further year :—*Held*, the Matrimonial Causes (Judgment Summons) Rules, 1952, now governed the procedure of the Divorce Court when exercising its jurisdiction under the Debtors Act, 1869; those rules were silent with regard to the necessity for the renewal of an order of commitment after the expiration of one year; there was no limitation as to the period of time for which such an order existed, and it continued in operation until the debt in respect of which it had been made had been wiped out; and, therefore, the application was unnecessary and would be dismissed. (Sichel *v.* Sichel. P.D. & A.) 277

12. Maintenance; defence; reasonable belief in wife's adultery; need for notice and particulars.—Where in answer to a complaint on an application for maintenance made by the wife under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, the husband asserts that he reasonably believes that she has committed adultery, although he does not assert that she has committed adultery, proper and particular notice of the substance of his assertion should be given to the wife. (Jones *v.* Jones. P.D. & A.) 563

13. Maintenance order; discharge; evidence of matters available at original hearing; admissibility; Summary Jurisdiction (Married Women) Act, 1895 (58 and 59 Vict., c. 39), s. 7.—On November 14, 1950, the wife obtained an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949. No allegation was then made by the husband that the wife had committed adultery. The husband now applied under the Summary Jurisdiction (Married Women) Act, 1895, s. 7, for the discharge of the order on the ground that the wife had committed adultery. In support of his application the husband stated that when he went home after demobilization in 1945 he saw and heard certain things as a result of which he was satisfied that the wife had been living in the matrimonial home with a certain man ; that since November 14, 1950, the man had continued to live in the same house as the wife; and that on an occasion since November 14, 1950, the husband had accused the wife, in the presence of a witness, of living with, and being kept by, this man, and the wife, as she now admitted, had stood by and not denied this. It was contended by the wife that, by s. 7, the act of adultery on which the husband sought to rely could be proved only by evidence of matters which had occurred since November 14, 1950:—*Held*, although the words " upon fresh evidence " appeared in the first part of s. 7, they did not appear in, and were not to be read into, the second part of s. 7 under which the husband's application was made; accordingly, the husband's evidence of matters which had occurred prior to the original hearing, although not given at that hearing, was, nevertheless, admissible on the application to discharge the original order; on the facts the husband had proved his case; and, since the second part of

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s. 7 was mandatory in its terms, the order of November 14, 1950, would be discharged. Ramsdale *v.* Ramsdale (1945) (109 J.P. 239), applied. (Roberts *v.* Roberts. P.D. & A.) 11

14. Maintenance order; variation; order for maintenance of wife and child; variation of order on re-marriage of wife; Summary Jurisdiction (Married Women) Act, 1895 (58 and 59 Vict. c. 39), s. 7.—On March 8, 1950, the wife obtained a separation order whereby she was awarded £2 a week as maintenance, being £1 10*s.* in respect of herself and 10*s.* in respect of the child of the marriage, of whom she was given custody. On October 17, 1951, the wife obtained a decree absolute of dissolution of the marriage on the ground of the husband's cruelty. On March 22, 1952, the wife re-married. The husband thereafter paid only 10*s.* a week as maintenance for the child. On July 24, 1953, the husband applied for the variation of the order "by revocation in so far as the payment to the wife . . . is concerned, on the ground that . . . the . . . wife . . . is no longer in need of maintenance". On August 5, 1953, the justices varied the order by reducing the amount from £2 to £1:—*Held*, since the separation order, although it contained a provision for the maintenance of the child, was, nevertheless, an order only in favour of the wife, it was inapt to ask for variation of the order by revocation of the payment to the wife, and in the circumstances the justices were entitled to reduce the sum awarded under the original order from £2 to £1. (Moore *v.* Napier (formerly Moore). P.D & A.) 22

15. Maintenance; reduction; dissolution of marriage; re-marriage of husband; materiality of second wife's ability to work herself; appeal; exhibits; documents produced and shown to justices not exhibited.—On December 20, 1949, an order was made in the wife's favour under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, whereby the husband was ordered to pay a total sum of £2 10*s.* per week as maintenance for her and the two children of the marriage. On March 2, 1951, the amount was increased to £4 10*s.* per week, namely, £3 10*s.* for the wife and 10*s.* for each of the two children. On May 28, 1953, a decree *nisi*, granted to the wife dissolving the marriage on the ground of the husband's desertion, was made absolute. On August 4, 1953, the husband re-married. On February 26, 1954, he applied for a variation of the order by reducing the amount of the weekly payments, on the ground that his means had decreased, that he had re-married, and that the means of the former wife had increased. Before the justices the husband produced a signed certificate from his employers showing his earnings and a letter from his bank showing his indebtedness to the bank. He stated that on his re-marriage a house was purchased in the name of his present wife and mortgaged, that he was responsible for repayments under the mortgage amounting to about 25*s.* weekly, that the house had five bedrooms, but that he had not thought of letting any accommodation, that he wanted his present wife at home and not out at work, and that before the marriage his present wife had been a housekeeper. The former wife stated in evidence that she was in a bad state of health, as a result of which the two children were boarded at a children's home. The justices varied the order by reducing by 10*s.* per week the amount payable as maintenance for the former wife, stating that they did not consider as reasonable the husband's "refusal to consider letting any part of his large house." The husband appealed on the ground that the reduction was insufficient. No documents had been made exhibits in the case:—*Held*, if part of the house were let, the

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present wife could exercise her skill as a housekeeper, thereby reducing the overhead expense of living in the house and thus indirectly relieving the husband financially; this was a matter which the justices were entitled to consider; and, since they were justified in reaching their conclusion, the appeal failed and would be dismissed. *Per curiam :* the signed certificate and the letter from the bank, which were produced and shown to the justices, and also, if any argument were to be based on it, the mortgage deed, should have been made exhibits, so that they would have been available to the Divisional Court. (Grainger *v.* Grainger. P.D. & A.) 432

16. Maintenance; wilful neglect to maintain; consensual separation; no agreement as to maintenance; neglect to maintain child; liability of husband.—On July 20, 1953, the wife left the matrimonial home, taking with her the child of the marriage, then aged about 18 months. On July 24, 1953, the wife issued a summons under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, alleging that the husband had deserted her and had wilfully neglected to provide reasonable maintenance for her and the child. The justices found that " the wife left home . . . on a consensual basis . . . and that the husband had not constructively deserted the wife ", that " there was no agreement, express or implied, that the husband should pay maintenance for the support of the wife and/or the child ", and that " there was no evidence from either side that after the parting on July 20, 1953, the husband paid the wife any maintenance either in respect of herself or the child." The justices held that the husband had been guilty of wilful neglect to provide reasonable maintenance for the wife and the child and ordered him to pay the wife £2 10*s.* per week, being £1 for her benefit and £1 10*s.* for the benefit of the child. On appeal by the husband:—*Held*, since the justices had found that the separation was consensual and that there was no agreement, express or implied, to maintain the wife, the husband could not be guilty of wilful neglect to provide reasonable maintenance for her; the failure of the wife's complaint in regard to her own maintenance did not exonerate the husband from his liability to maintain the child; in the absence of any explanation by the husband of his failure to maintain the child, the wife was entitled to an order in her favour in respect thereof; but the justices had awarded the maximum sum of £1 10*s.*, in respect of maintenance for the child, and, therefore, the proper sum to be awarded in respect of the wife should be nominal, namely, 1*s.* a week. Baker v. Baker (1949) (66 (pt. 1) T.L.R. 81), followed. Kinnane *v.* Kinnane (1953) (117 J.P. 552), applied. (Starkie *v.* Starkie (No. 2). P.D. & A.) 59

17. National Assistance; deed of separation; payments under deed; refusal of justices to order further maintenance; assistance granted to wife by National Assistance Board; right of board to recover from husband; National Assistance Act, 1948 (11 and 12 Geo. 6, c. 29), s. 42 (1) (a), s. 43 (2).—Under a deed of separation dated March 11, 1938, the respondent agreed to pay his wife £1 a week by way of maintenance and he kept up those payments regularly. The wife made a complaint to justices under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, that the respondent had wilfully neglected to maintain her, but on December 17, 1952, the justices dismissed the complaint. Between January and July, 1953, the wife applied for and obtained relief from the National Assistance Board, and in August, 1953, the board, by way of complaint, applied for summonses

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to be served on the respondent to show cause why orders should not be made on him under s. 43 (2) of the National Assistance Act, 1948, to repay the amounts paid by the board and to pay such sum, weekly or otherwise, as the court might think appropriate. The justices dismissed the complaints:—*Held*, (i) that the existence of a deed of separation and the fact that the respondent had made payments under it constituted no bar to the wife's taking proceedings in respect of maintenance; Tulip *v.* Tulip ([1951] 2 All E.R. 91) and Dowell *v.* Dowell (1952) (116 J.P. 350), applied; (ii) under s. 42 (1) (a) of the Act of 1948 the respondent was liable to pay his wife reasonable maintenance, and was not entitled to rely on the deed if the sum provided under it did not amount to reasonable maintenance; (iii) under s. 43 (2) of the Act the board were entitled to recover from the respondent a reasonable sum in respect of the relief which they had paid to the wife, and the case must be remitted to the justices to determine what was a reasonable sum for the respondent to pay in respect of the arrears and in respect of the future. (National Assistance Board *v.* Prisk. Q.B.D.) 194

18. Procedure; right to stop case at conclusion of complainant's evidence; desirability of hearing both sides in matrimonial dispute.—The parties were married in August, 1953, the husband being then 20 and the wife 18 years of age. The wife was then pregnant by the husband. On November 24, 1953, she left the husband. She complained to the justices that the husband had been guilty of persistent cruelty towards her and applied for an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949. On January 20, 1954, the wife stated in evidence before the justices that the husband had made excessive sexual demands on her, that there had been blows in the course of quarrels arising out of these demands, and that there had been disputes over money. At the conclusion of the evidence of the wife and of her mother, the justices stopped the case, stating as their reasons that the husband's conduct in respect of the sexual demands had not been unreasonable; that, though the acts alleged to be physical cruelty might have taken place, they did not consider they were "of sufficient persistence or of sufficient seriousness to cause any serious consequences" to the wife's health; and that, "having regard to the short duration of the marriage, the youth of the parties . . . and the lack of substance in the allegations", the wife had failed to make out her case. On appeal by the wife it was contended that the justices were under a duty to hear the whole case if there were *prima facie* evidence in support of the complaint:—*Held*, it was plain on the face of their statement of reasons that the justices were not purporting to rule as a matter of law that the matters complained of could not, if established, amount to persistent cruelty, but were saying that, in their opinion, the wife's case lacked substance and that they did not wish to hear any more of it; it was advisable for justices to hear both sides in a matrimonial dispute, but in the circumstances they were entitled to act as they did; and, accordingly, the appeal would be dismissed. (Ramsden *v.* Ramsden. P.D. & A.) 430

J

JUSTICES

1. Bias; position of justices' clerk; prosecution by officer of county council; justices' clerk member of council; not member of committee to which pending proceedings reported; test to be applied; real likelihood of bias to be shown.—To disqualify a person from acting in a judicial or quasi-judicial capacity on the ground of interest (other than

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a pecuniary or proprietary interest) in the subject-matter of the proceedings, a real likelihood of bias must be shown. Dictum of BLACKBURN, J., in R. *v.* Rand (1866) (30 J.P. 293) applied. The real likelihood of bias must be made to appear, not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries. *Per curiam*: The frequency with which allegations of bias have come before the courts in recent times seems to indicate that the reminder of LORD HEWART, C.J., in R. *v.* Sussex JJ. *Ex parte* McCarthy (1924) (88 J.P. 3), that it is "of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done" is being urged as a warrant for quashing convictions or invalidating orders on quite unsubstantial grounds and, indeed, in some cases on the flimsiest pretexts of bias. While indorsing and fully maintaining the integrity of the principle re-asserted by LORD HEWART, C.J., this court feels that the continued citation of it in cases to which it is not applicable may lead to the erroneous impression that it is more important that justice should appear to be done than that it should in fact be done. Per LORD GODDARD, C.J.: If the court were asked to express an opinion they would say that it would be better that a member of a county council should not sit as a clerk to justices in cases where the prosecution is conducted on behalf of the council of which he is a member. (R. *v.* Camborne Justices. *Ex parte* Pearce. Q.B.D.) 488

2. Clerk; intervention in examination of witnesses; notes of evidence based on proof of a witness; desirability of taking notes in bound notebook.—The wife issued a summons under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, alleging that the husband had deserted her. At the trial, where both the husband and the wife were legally represented, the clerk to the justices had before him a proof of the evidence of the wife from which he took his notes of her evidence. The husband's solicitor knew that the clerk had this proof and raised no objection. When the wife had given her evidence-in-chief, the husband's solicitor started to cross-examine her with a view to establishing that she had committed adultery, or had given the husband reasonable grounds for believing that she had committed adultery, or, alternatively, that by reason of her conduct he had just cause in living apart from her. The clerk intervened during the cross-examination so that the husband's solicitor was prevented from putting to the wife many questions relevant to those issues. When the husband was called to give evidence, the clerk enumerated some five points which should be put to him. The husband's solicitor put those five questions to the husband and a few more questions which were merely ancillary. The clerk then put questions to the husband in the nature of cross-examination and made a note of the husband's answers, after which the wife's solicitor cross-examined the husband, but the clerk made no note of this cross-examination. The court found the husband guilty of desertion and made an order in favour of the wife. On appeal by the husband:—*Held*, since both parties were represented at the trial neither of them was in need of assistance to present his or her case to the court; it was clear that, although the clerk had a duty to see that the justices were advised as to what was and what was not relevant and that the time of the court was not wasted, he had exceeded his duty and had put substantial obstruction in the way of the husband's solicitor in the conduct of his client's

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case, so that vital questions were not put to the husband in examination-in-chief; accordingly, justice did not appear manifestly to have been done, and the decision of the justices could not stand and the case must be re-heard. *Per curiam*: It was undesirable that the clerk to the justices should have had before him at the trial a proof of the wife's evidence, and in no circumstances should he have made it the basis of his notes of evidence. Such notes should be made in a bound notebook and not on such a proof and/or deposition paper. (Hobby *v.* Hobby. P.D. & A.) 331

3. Information; defectiveness; lack of "such particulars as may be necessary for giving reasonable information of the nature of the charge"; charge of failure to pay minimum remuneration to worker; Magistrates' Courts Rules, 1952 (S.I. 1952 No. 2190), r. 77 (1), (2); Milk Distributive Wages Council (England and Wales) Regulation Order, 1952 (S.I. 1952 No. 986), sch. para. 6 (2) (b) (i).—The appellant was charged on an information alleging that "she being an employer of workers to whom the Milk Distributive Wages Council (England & Wales) Regulation Order, 1952, made under the Wages Councils Act, 1945, applied, did on December 21, 1952 . . . unlawfully fail to pay remuneration not less than the statutory minimum to George Henry Tarry, one of the said workers, contrary to s. 11 of the Wages Councils Act, 1945, and the said order made thereunder." An objection was taken on behalf of the appellant that the information was defective in that it did not give such particulars as were necessary to give the appellant reasonable information of the charge against her, as required by r. 77 (1) and (2) of the Magistrates' Courts Rules, 1952. The justices overruled the objection and convicted the appellant:—*Held*, that the objection should have succeeded, as the information should have specified the provision of the order alleged to have been infringed, the nature of the employment, the amount which the worker had been paid and the amount which, it was alleged, he should have been paid, and (*quaere*) the worker's age, and, therefore, the conviction must be quashed. Robertson *v.* Rosenberg (1951) (115 J.P. 128) applied. (Stephenson *v.* Johnson. Q.B.D.) 199

4. Presence of clerk in retiring room; merits of case not affected; remedy complaint to Lord Chancellor.—The fact that justices have disregarded the procedure laid down in the PRACTICE DIRECTION dated November 16, 1953 (117 J.P. 549) with regard to the presence of their clerk in their retiring room while they are considering their decision is not a ground for the quashing of a conviction by the Divisional Court if the disregard of procedure did not affect the merits of the case. The proper remedy in such circumstances is by complaint to the Lord Chancellor. R. *v.* Barry (Glamorgan) JJ. *Ex parte* Kishim (1953) (117 J.P. 546) distinguished. (*Ex parte* How. Q.B.D.) 75

5. Procedure; case for prosecution closed; dangerous driving; identity of driver not proved; refusal to allow witness to be recalled; discretion of justices.—In a prosecution before justices for dangerous driving the prosecution omitted to prove the identity of the driver. At the close of the case for the prosecution it was submitted on behalf of the defendant that there was no case to answer. It was contended on behalf of the prosecution that the justices had a bounden duty to permit the case to be re-opened so that evidence of identity might be tendered, but the justices refused to allow the case to be re-opened:—*Held*, that, the matter which the prosecution had omitted to prove

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being one of substance, the justices had a discretion in the matter and were not bound to exercise it in favour of the prosecution, and the Divisional Court would, therefore, not interfere with their decision. Duffin *v.* Markham (1918) (82 J.P. 281) distinguished. (Middleton *v.* Rowlatt. Q.B.D.) 362

6. Procedure; offence on which accused entitled to demand trial by jury; accused only asked if he wished to be tried summarily; no specific information given on right to trial by jury; consent to summary trial by accused's advocate; Magistrates' Courts Act, 1952 (15 and 16 Geo. 6 and 1 Eliz. 2, c. 55), s. 25 (3).—Where a person is charged before justices with an offence in respect of which he is entitled to demand trial by jury, the provisions of s. 25 (3) of the Magistrates' Courts Act, 1952, require that he must be specifically informed of his right to trial by jury and asked whether he wishes to be so tried, and the statute is not complied with if the justices merely ask the accused whether he wishes to be tried summarily. *Per curiam :* If the accused is represented by counsel or solicitor who, in his presence and on his behalf, elects for summary trial when told of the right to trial by jury, that election is binding on the accused unless he contradicts it at the time. (R. *v.* Salisbury and Amesbury Justices. *Ex parte* Greatbatch. Q.B.D.) 392

L

LAND

Acquisition; compulsory purchase order; confirmation by Minister of Education; communication to Minister from Minister of Housing; duty to disclose to owner of land.—On October 1, 1952, the London County Council, to provide a site for a school, made an order for the compulsory purchase of land which included two houses belonging to the appellant. The appellant lodged an objection, and on April 23, 1953, a public local inquiry was held by an inspector appointed by the Minister of Education who made a report in which he expressed the view that the compulsory purchase order should not be confirmed, but that an alternative site should be used for the erection of the school. The land sought to be acquired and that of which the alternative site formed part was the subject of the Administrative County of London Development Plan, 1951, into which, in 1953, an inquiry was being conducted by the Minister of Housing and Local Government. In view of that fact the Minister of Education sent a copy of the inspector's report to the Minister of Housing who, after inquiry, expressed the wish that the order should be confirmed and the alternative site left available for housing. The matter was referred to the inspector who replied that if, as now appeared, it had been proved at the inquiry that it would be difficult to stop housing work planned for the alternative site, he would have recommended that the compulsory purchase order should be confirmed. Copies of the letters passing between the Minister of Education and the inspector and a copy of the inspector's report were sent to the appellant, but the appellant complained that the Minister of Education had acted on a communication from the Minister of Housing concerning the subject-matter of the compulsory purchase order without disclosing the contents of that communication to the appellant or affording her an opportunity of challenging the accuracy of the facts mentioned in it, and so, when considering her objection to the order, had failed to act judicially or to conform with the principles of natural justice, with the result that the confirmation of the order was outside the powers conferred on the

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Minister by the Education Acts, 1944 to 1948, and the Acquisition of Land (Authorisation Procedure) Act, 1946:—*Held*, the Minister of Education was under a duty to consider the appellant's objection judicially and that duty had been fulfilled, but the decision whether or not to confirm the order was an administrative decision based on public policy, in coming to which the Minister was entitled to be informed of matters not raised by the objection and was not under an obligation to disclose information of that kind; and, therefore, the Minister was not bound to disclose to the appellant any communication received from the Minister of Housing. Observations of LORD GREENE, M.R., in B. Johnson & Co. (Builders), Ltd. *v.* Minister of Health (1947) (111 J.P. 508), applied. (Darlassis *v.* Minister of Education and Another. Q.B.D.) 452

LICENSING

1. Occasional licence; holder of off-licence held in respect of other premises; grant on undertaking by licensee not to sell for consumption on off-licence premises; *certiorari*; Licensing Act, 1953 (1 and 2 Eliz. 2, c. 46), s. 148 (1).—The holder of an off-licence in respect of premises in Brighton, who was also the holder of a retailer's on-licence in respect of premises in Taunton, applied in the latter capacity to licensing justices for the grant of an occasional licence in respect of the Brighton premises authorizing the sale by him of intoxicating liquor between the hours of 2.30 and 6 in the afternoon, which were outside the normally permitted hours, on December 22, 23 and 24, 1953, on the occasion of Christmas shopping facilities. The justices granted the licence on the applicant's undertaking not to sell any intoxicating liquor for consumption on the premises and to close the premises for the sale of intoxicating liquor at 7 o'clock:—*Held*, (i) that the consent granted by the justices under s. 148 (1) of the Licensing Act, 1953, was a judicial, and not an administrative, Act, and one in respect of which a remedy by *certiorari* would lie. R. *v.* Rotherham Licensing JJ. *Ex parte* Chapman (1939) (103 J.P. 251) and *R. v.* Torquay Licensing JJ. *Ex parte* Brockman (1951) (115 J.P. 514) applied; (ii) that an occasional licence was an on-licence and could be granted only to the holder of a retailer's on-licence, and justices had no authority to grant such a licence, and to restrict it so as, in effect, to become an off-licence, and, therefore, an order of *certiorari* to quash the consent granted by the justices must issue. (R. *v.* Brighton Justices. *Ex parte* Jarvis. Q.B.D.) 117

2. Planning removal; approval by licensing planning committee subject to condition; compliance with condition; jurisdiction of justices to refuse to grant removal; Licensing Act, 1953 (1 and 2 Eliz. 2, c. 46), s. 58 (2).—The applicants were the holders of a justices' full on-licence in respect of premises in the city of London which were damaged by enemy action during the war and remained closed thereafter, the licence being suspended under s. 10 (3) of the Finance Act, 1942. On April 12, 1954, the applicants applied to the city of London licensing planning sub-committee under s. 65 (2) of the Licensing Act, 1953, to formulate proposals under s. 57 (1) for the removal of the licence to other premises in the city. The sub-committee submitted a proposal, which was confirmed by the licensing planning committee, subject to the condition imposed by them that the applicants should "forthwith [give] an effective written undertaking to the licensing justices . . . (i) to sell no intoxicating liquor under the licence for consumption off the premises, and (ii) to provide only one bar for use by the general

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public ". The applicants gave the undertaking. On July 14, 1954, the applicants applied under s. 58 (2) of the Act for the grant of a planning removal of the licence, but the justices refused the application on the ground that the conditions, being of a permanent nature, were incapable of being complied with prior to the hearing. On an application for an order of *mandamus*:—*Held*, that, the applicants having complied with the conditions imposed by the licensing planning committee that they should give the written undertaking to the justices, the justices were not entitled to investigate whether the condition imposed was good or bad; they had no option but to grant the removal; and, therefore, *mandamus* must issue. (R. *v.* City of London Licensing Justices. *Ex parte* Stewart and Another. Q.B.D.) 529

3. Search warrant; licensed premises; execution on Sunday; Sunday Observance Act, 1677 (29 Car. 2, c. 7), s. 6; Magistrates' Courts Act, 1952 (15 and 16 Geo. 6 and 1 Eliz. 2, c. 55), s. 102 (3); Licensing Act, 1953 (1 and 2 Eliz. 2, c. 46), s. 152 (1).—By s. 102 (3) of the Magistrates' Courts Act, 1952, a search warrant issued by a justice is " as effectual on Sunday as on any other day " and, therefore, a search warrant for the search of licensed premises issued under s. 152 (1) of the Licensing Act, 1953, can lawfully be executed on a Sunday, notwithstanding the provisions of s. 6 of the Sunday Observance Act, 1677. (Magee *v.* Morris. Q.B.D.) 360

4. Club; striking off register; summons to secretary to show cause; order for costs; sum in excess of costs of prosecution; penalty in guise of costs.—The secretary of a club registered under ss. 91 and 92 of the Licensing (Consolidation) Act, 1910, was summoned to show cause why the club should not be struck off the register under s. 95 (1) of the Act. There were also before the justices ten summonses against the manager of the club, five relating to the sale of liquor without a justices' licence and five relating to the supply of liquor outside permitted hours. The justices convicted the manager on these, and, on inquiring what were the costs of the prosecution, were told that they amounted to 21 guineas. They fined the manager £10 and ordered him to pay costs amounting in all to 20 guineas. They, further, ordered the club to be struck off the register and ordered the secretary to pay one hundred guineas costs on the summons for striking off:—*Held*, that the justices were in fact inflicting a penalty on the secretary under the guise of costs, which they had no power to do, and that *certiorari* must issue to quash the order made against the secretary. (R. *v.* Highgate Justices. *Ex parte* Petrou. Q.B.D.) 151

LOCAL GOVERNMENT

Expenditure; rating authority; employment of valuer to review valuations; payment out of general rate fund; Local Government Act, 1933 (23 and 24 Geo. 5, c. 51), s. 187 (2).—A rating authority employed D., a former rating valuer to the local assessment committee, to review the valuations of properties in their area in order to assist them in making proposals for the re-valuation of those properties, and they paid him fees for his services out of the general rate fund, in accordance with s. 187 (2) of the Local Government Act, 1933. G. appealed, as a person aggrieved, under s. 187 (3) of the Act against the orders authorizing the payments on the ground that the payments were *ultra vires* and illegal:—*Held*, that under s. 33 (2) of the Local Government Act, 1948, the rating authority had a duty, and under s. 40 (1) (b) a right as ratepayers in respect of property owned by them,

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to make a proposal for the alteration of the valuation list; that in such a highly technical matter they were entitled to employ technical advice as something incidental to such duty and right; and that, therefore, the payments were properly made. Observations of LORD HANWORTH, M.R., in A.-G. *v.* Smethwick Corporation (1932) (96 J.P. 105) applied. (Grainger *v.* Liverpool Corporation. Q.B.D.) ... 136

M

MASTER AND SERVANT

Wages Control; minimum wage; "benefits or advantages in connexion with any employment"; payments by worker to be deemed deduction from wages; manager of licensed non-residential establishment; payment to employer for grant of right to carry on catering business; Catering Wages Act, 1943 (6 and 7 Geo. 6, c. 24), s. 10 (3).—By s. 10 (3) of the Catering Wages Act, 1943: "Where any benefits or advantages are provided, in connexion with any employment, by the employer . . . any sum paid by the worker in respect of those benefits or advantages shall be deemed for the purposes of this Act to have been deducted by the employer from his remuneration". By an agreement in writing the appellants employed a manager at a non-residential licensed establishment owned by them at a salary to be paid in accordance with the scales laid down by the Catering Wages Act, 1943, and any order made thereunder. By a second agreement in writing, made on the same day, which, it was expressly provided, should be read together with the first, the appellants agreed that the manager should, during the term of his service agreement, carry on a catering business on the premises and retain the profits for himself in consideration of paying to them a weekly sum of £3 out of the profits. An information having been preferred by the respondent against the appellants charging them with having failed to pay the manager the minimum statutory remuneration during a particular month, the justices were of opinion that the sum of £13 paid by the manager to the appellants for the month in question should be deducted in arriving at the remuneration received by him from the appellants, and that, accordingly, the manager had not received the remuneration due to him under the Act, and they convicted the appellants:—*Held*, that the test whether a payment by a worker to an employer should be treated as a deduction under s. 10 (3) was whether it was in respect of a benefit or advantage provided in connexion with the employment; that, as it was expressly provided in the present case that the two agreements should be read together, the payment could not be held to be a separate and independent transaction, but must be held to have been made in respect of a benefit conferred in connexion with the worker's employment as manager; and that the conviction was, therefore, right. (People's Refreshment House Association, Ltd. *v.* Jones. Q.B.D.) 127

MERCHANDISE MARKS

False trade description; tickets showing wrong weight placed on goods; description not put on to mislead customer; vicarious liability of employer; Merchandise Marks Act, 1887 (50 and 51 Vict., c. 28), s. 2 (1) (d), s. 3 (1).—Informations under s. 2 (2) of the Merchandise Marks Act, 1887, were preferred against the respondent, a butcher, charging him with having in his possession in his shop turkeys to which false trade descriptions had been applied. In each case round the neck of the turkey a ticket had been placed on which was printed in

MERCHANDISE MARKS—*continued* PAGE

small ink figures the weight of the bird, and in each case the true weight was less than that marked on the ticket. The birds had been weighed and the tickets marked by the respondent's employee, and the respondent did not know that the tickets had been wrongly marked. The magistrate accepted contentions on behalf of the respondent that the figures did not amount to a false trade description as they were so small that they could not be seen by and mislead any prospective customer, and that the respondent was not vicariously responsible for the act of his employee. He, accordingly, dismissed the informations. (Mear *v.* Baker. Q.B.D.) 483

MUSIC

Premises kept or used for public music; bar of public house; platform with lighting and microphone; performers not paid; provision of drinks by audience; London County Council (General Powers) Act, 1915, s. 16 (1).—The saloon bar of a public house was fitted with a raised platform, a microphone, footlights, and top lighting, and on three occasions friends and customers of the licensee played on musical instruments provided by him and sang, on two of the occasions the performers being clad in coloured blazers provided by the licensee. The performers were not paid by the licensee and were under no obligation to play for any particular time or at all, and no money was collected for them from the customers in the bar, but the customers from time to time provided drinks for them:—*Held*, the premises were "kept or used" for public music within s. 16 (1) of the London County Council (General Powers) Act, 1915, and, as the licensee had not obtained from the council a licence for that purpose, he was guilty of an offence under the sub-section. Brearley *v.* Morley (1899) (63 J.P. 582), distinguished. (McDowell *v.* Maguire. Q.B.D.) 555

N

NATIONAL HEALTH SERVICE

Superannuation; determination of questions by Minister of Health; "mental health officer"; shoemaker employed in mental hospital; periodically in charge of working patients; finality of determination of status by Minister; National Health Service Act, 1946 (9 and 10 Geo. 6, c. 81), s. 67 (1) (i); National Health Service (Superannuation) Regulations, 1950 (S.I. 1950, No. 497), reg. 60.—The plaintiff was employed as a shoemaker by the management committee of a mental hospital and was in charge of the shoemaker's shop attached to the hospital. Patients worked in the shoemaker's shop under the control of a charge-hand, as part of their hospital treatment, and when the charge-hand was away the plaintiff was in sole charge of them. On December 31, 1952, the Ministry of Health informed the plaintiff that, pursuant to his powers under the National Health Service (Superannuation) Regulations, 1950, reg. 60, the Minister had determined that the plaintiff was not a mental health officer within the meaning of the regulations and so was not entitled to certain rights relating to superannuation. The plaintiff having brought an action against the Ministry for a declaration that he was a mental health officer within the meaning of reg. 1 (3) of the regulations, the Ministry claimed that the court had no jurisdiction in the matter:—*Held*, under s. 67 (1) (i) of the National Health Service Act, 1946, it was within the competence of the Minister to make reg. 60; that regulation provided that any question arising under the regulations as to the rights of a person to whom the regulations applied should be determined by the Minister; the court could not proceed as an appellate authority to review and

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overrule a determination of the Minister under the regulation; and, therefore, the court had no jurisdiction to entertain the action which was, in effect, an appeal against the determination of the Minister. East Midlands Gas Board *v.* Doncaster Corpn. (1952) (117 J.P. 43) and Gillingham Corpn. *v.* Kent County Council (1952) (117 J.P. 39), applied. (Healey *v.* Ministry of Health. Q.B.D.) 400

NEGLIGENCE

1. ***Res ipsa loquitur***; onus on defendants to disprove negligence; pleading; damage arising from stranding of vessel; pleading of negligence in navigation; stranding due to fractured stern frame; not pleaded by defendants; plaintiff's right to rely on negligence in relation to fracture.—A tanker approaching an estuary in weather which was not unusual developed a steering fault and stranded on a revetment wall in the estuary. Justifiably in view of the danger to the vessel and the crew, the master jettisoned 400 tons of oil, which was subsequently deposited on the plaintiffs' foreshore, causing damage. The plaintiffs brought an action for damages for trespass, nuisance, and negligence against the shipowners and the master, and on the allegation of negligence pleaded negligent navigation by the master. The defendants denied the negligence and pleaded that the stranding was attributable to the steering being out of control, which was caused by the propeller's striking "some object." They denied trespass or nuisance. The cause of the steering being out of control was found as a fact to be a fracture of the stern frame of the vessel, fouling the propeller, but no evidence was given of how the fracture had come about:—*Held*, (i) (MORRIS, L.J., *dissentiente*) the stranding of the vessel was an accident such as did not happen in the ordinary course of things with a well-found vessel and the defendants had not discharged the onus on them of explaining its occurrence, including the cause of the fracture of the stern frame: dictum of ERLE, C.J., in Scott *v.* London Dock Co. (1865) (3 H. & C. 601), and (per DENNING, L.J.) The Merchant Prince ([1892] P. 179), applied; the plaintiffs' failure to plead the defendants' negligence in sending a vessel to sea with a fractured stern frame did not prevent their setting it up, because the defendants had not pleaded that that had been the cause of the stranding; and, therefore, the defendants were liable for negligence; (ii) liability in trespass or for nuisance, if it existed, would be destroyed by necessity unless there was negligence (per SINGLETON, L.J.) or would arise only if there was negligence (per MORRIS, L.J.); the liability for trespass did not exist because the discharge of oil was not directly on to the plaintiffs' foreshore (per DENNING, L.J.). Per DENNING, L.J.: as the discharge of oil did not involve use by the defendants of any land, it was not a private nuisance: dictum of LORD WRIGHT in Sedleigh-Denfield *v.* O'Callaghan ([1940] 3 All E.R. 364), applied; but, as the oil was likely to be carried on to the shore to the prejudice and discomfort of Her Majesty's subjects, it was a public nuisance: R. *v.* Mutters (1864) (Le. & Ca. 491), and Scott *v.* Shepherd (1773) (2 Wm. Bl. 892), applied; and as the defendants had failed to show that the discharge was an inevitable accident, *i.e.*, a necessity which arose utterly without their fault, the defendants were liable to the plaintiffs therefor: Weaver *v.* Ward (1616) (Hob. 134). Dickenson *v.* Watson (1682) (T. Jo. 205), Wringe *v.* Cohen ([1939] 4 All E.R. 241), and Sadler *v.* South Staffordshire & Birmingham District Steam Tramways Co. (1889) (53 J.P. 694), applied. Decision of DEVLIN, J. (118 J.P. 1), reversed. (Southport Corporation *v.* Esso Petroleum Co., Ltd. and Another. C.A.) 411

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2. Schoolmaster; grammar school; boys on play ground; supervision; boy injured in scuffle by sheath knife.—The infant plaintiff, a boy aged 13 years, went to his school on the last day of term when the prefects were absent and there was a general relaxation of discipline. In the course of the morning "break" the plaintiff and another boy wanted to get a sheath knife from a third boy who carried it in his belt. A scuffle ensued in which the third boy pulled out the knife, lunged with it, and unintentionally injured the leg of the plaintiff so that the leg had to be amputated. In an action for damages against the education authority and certain masters at the school it was contended on behalf of the plaintiff that the masters were negligent in that at least one of them knew that boys brought sheath knives to school, and there was an inadequate system of supervision on the day of the accident:—*Held*, the duty of a schoolmaster did not extend to the constant supervision of all the boys in his care all the time; only reasonable supervision was required; there was no evidence in the present case that there had been an absence of such supervision; and, therefore, the action failed. (Clark *v.* Monmouthshire County Council and Others. C.A.) 244

NUISANCE

1. Sewer; overflow; flooding of neighbouring premises; liability of sanitary authority; Public Health Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 49), s. 31, s. 34 (1).—The defendant corporation, as sanitary authority for the area, owned and maintained a soil sewer which ran under the street in which the plaintiff had, since 1940, owned and occupied a house and garden. When the sewage system had been built in 1898 it had been properly constructed and of adequate capacity to deal with the area served, but, owing to the building of housing estates between 1946 and 1949, there were now over 3,800 houses served by the sewer, and it had become inadequate to deal with the increased volume of sewage to be carried away. The sewer was kept properly cleansed by the corporation, but at times of heavy rain there was a serious eruption of untreated sewage which surged up from the sewer manhole, opposite the plaintiff's premises, flowed into the street, and flooded the plaintiff's garden. In 1953 there were 11 such floodings, after each of which the plaintiff had to spend two or three hours cleaning up the mess and slime. The flooding caused the plaintiff and his family grave inconvenience and constituted a serious deprivation of the ordinary and reasonable enjoyment of his property. The Ilford Borough Corporation Drainage Act, 1950 (14 Geo. 6, c. lxi) empowered the corporation to build a new sewage system, but the necessary consent to raising the capital required could not, at present, be obtained. The plaintiff did not allege negligence on the part of the corporation, but he claimed an injunction and damages for nuisance and trespass:—*Held*, (i) the nuisance was constituted, not by the sewers, but by their being overloaded, which arose, not by any act of the corporation, but because, by s. 34 (1) of the Public Health Act, 1936, the corporation were bound to permit new householders to discharge their sewage into the sewers, and, therefore, the corporation had not caused, continued, or adopted a nuisance; (ii) the necessary implication from s. 31 of the Public Health Act, 1936, was that, provided the corporation did not "create a nuisance" in carrying out their duties, they were excluded from liability, and, therefore, on construction, s. 31 excluded liability for escapes in the absence of negligence, and negatived the rule in Rylands *v.* Fletcher (1868) (33

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J.P. 70), with the result that the corporation were not liable for the escape of sewage. (Smeaton *v.* Ilford Corporation. Ch.D.) 290

2. Ship; discharge of oil to lighten vessel stranded in river; damage to adjoining foreshore; need to prove negligence.—The plaintiffs were owners of a certain area of foreshore; the first defendants were the owners and the second defendant was the master of an oil tanker. At 11.45 on December 3, 1950, the vessel was bound from Liverpool to Preston and on approaching the Ribble estuary in rough weather developed a steering fault. In view of the weather and the danger of turning round the master decided to continue into the channel. At 15.15 the vessel took an uncontrollable sheer to starboard and ran aground on an underwater revetment wall. There the vessel and the lives of the crew were in a position of grave danger, and in order to lighten her the master started to jettison his cargo of fuel oil. After he had jettisoned over four hundred tons the vessel came off the wall and grounded on some sand. A great deal of the oil became deposited on the foreshore of the plaintiffs and they suffered damage. In an action for trespass and/or nuisance and/or negligence:—*Held*, as to private nuisance there was no prerequisite that the nuisance should emanate from neighbouring property of the defendant; as to public nuisance the estuary in question was a public navigable river and analogous to a highway; though the plaintiffs' foreshore was not contiguous to the river, it was sufficiently proximate to it to be affected by the misuse of it by the discharge of oil; and, therefore, the plaintiffs had a good cause of action in nuisance, either public or private; the principles relating to nuisance on a highway applied to damage (either direct or indirect) done by a ship in a public navigable river to adjoining property; and, consequently, to succeed the plaintiffs had to prove negligence on the part of the defendants: dicta of LORD BLACKBURN in Fletcher *v.* Rylands (1866) (30 J.P. 436) and River Wear Comrs. *v.* Adamson (1877) (42 J.P. 244)) applied; on the facts the defendants had not been negligent, and, therefore, the action failed. *Per curiam*, the burden of proving negligence was on the plaintiffs, and the defendants merely had to satisfy the court that they had not been negligent and had not to prove inevitable accident: The Merchant Prince ([1892] P. 179), discussed. (Southport Corporation *v.* Esso Petroleum Co., Ltd. and Another. Q.B.D.) 1

3. (i) Ship; discharge of oil to lighten vessel stranded in estuary; damage to adjoining foreshore; necessity; need to prove negligence. (ii) Public nuisance; discharge of oil to lighten vessel stranded in estuary; damage to adjoining foreshore; failure by defendants to prove inevitable accident.—A tanker approaching an estuary in weather which was not unusual developed a steering fault and stranded on a revetment wall in the estuary. Justifiably in view of the danger of the vessel and the crew, the master jettisoned 400 tons of oil, which was subsequently deposited on the plaintiffs' foreshore, causing damage. The plaintiffs brought an action for damages for trespass, nuisance, and negligence against the shipowners and the master, and on the allegation of negligence pleaded negligent navigation by the master. The defendants denied the negligence and pleaded that the stranding was attributable to the steering being out of control, which was caused by the propeller's striking "some object". They denied trespass or nuisance. The cause of the steering being out of control was found as a fact to be a fracture of the stern frame of the vessel, fouling the propeller, but no evidence was given of how the

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fracture had come about:—*Held*, (i) (MORRIS, L.J., *dissentiente*) the stranding of the vessel was an accident such as did not happen in the ordinary course of things with a well-found vessel and the defendants had not discharged the onus on them of explaining its occurrence, including the cause of the fracture of the stern frame: dictum of ERLE, C.J., in Scott *v.* London Dock Co. (1865) (3 H. & C. 601), and (per DENNING, L.J.) The Merchant Prince ([1892] P. 179) applied; the plaintiffs' failure to plead the defendants' negligence in sending a vessel to sea with a fractured stern frame did not prevent their setting it up, because the defendants had not pleaded that that had been the cause of the stranding; and, therefore, the defendants were liable for negligence. (ii) liability in trespass or for nuisance, if it existed, would be destroyed by necessity unless there was negligence (per SINGLETON, L.J.) or would arise only if there was negligence (per MORRIS, L.J.); the liability for trespass did not exist because the discharge of oil was not directly on to the plaintiffs' foreshore (per DENNING, L.J.). Per DENNING, L.J.: as the discharge of oil did not involve use by the defendants of any land, it was not a private nuisance: dictum of LORD WRIGHT in Sedleigh-Denfield *v.* O'Callaghan ([1940] 3 All E.R. 364), applied; but, as the oil was likely to be carried on to the shore to the prejudice and discomfort of Her Majesty's subjects, it was a public nuisance: Reg. *v.* Mutters (1864) (Le. & Ca. 491), and Scott *v.* Shepherd (1773) (2 Wm. Bl. 892), applied; and as the defendants had failed to show that the discharge was an inevitable accident, *i.e.*, a necessity which arose utterly without their fault, the defendants were liable to the plaintiffs therefor: Weaver *v.* Ward (1616) (Hob. 134), Dickenson *v.* Watson (1682) (T.Jo. 205), Wringe *v.* Cohen ([1939] 4 All E.R. 241); and Sadler *v.* South Staffordshire & Birmingham District Steam Tramways Co. (1889) (53 J.P. 694), applied. Decision of DEVLIN, J. (1953) (118 J.P. 1), reversed. (Southport Corporation *v.* Esso Petroleum Co., Ltd. and Another. C.A.) 411

P

POLICE

Pension; decision of medical referee; disablement not result of injury received in course of duty; appeal to quarter sessions; jurisdiction of quarter sessions; Police Pensions Act, 1948 (11 and 12 Geo. 6, c. 24), s. 5 (1); Police Pensions Regulations, 1949 (S.I. 1949, No. 1241), reg. 45 (1).—A member of the metropolitan police force on retirement was granted an ill-health gratuity under reg. 5 of the Police Pensions Regulations, 1949. He applied under reg. 43 (2) for a supplemental pension in lieu of the gratuity, but under reg. 43 (1) a duly qualified medical practitioner certified that his disability was not the result of any injury received by him in the course of duty, and the application was refused. The applicant gave notice of appeal under reg. 44 (2), and the Home Secretary appointed a medical referee, who confirmed the finding of the medical practitioner. The applicant then appealed, under s. 5 (1) of the Police Pensions Act, 1948, to quarter sessions. Quarter sessions upheld a preliminary objection taken on behalf of the Home Secretary that they had no jurisdiction to review the decision of the medical referee and that their powers were limited to deciding whether or not the evidence placed before the referee was inaccurate or inadequate. Against that decision the applicant appealed to the Divisional Court, under s. 5 (3) of the Act:—*Held*, that under reg. 44 (3) the decision of the medical referee was made final, subject to reg. 45; that reg. 45 (1) provided for an appeal to quarter sessions only for the purpose of considering whether the evidence before the medical

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referee was "inaccurate or inadequate", and there was no general right of appeal to quarter sessions against the referee's decision; and, therefore, quarter sessions had rightly determined the extent of their jurisdiction. (Ead *v.* Home Secretary. Q.B.D.) 160

PRIVATE STREET WORKS

"Unreasonable"; proposed works premature; proposal to make up street before land fully developed; Private Street Works Act, 1892 (55 and 56 Vict., c. 57), s. 7 (d).—In 1951 the appellant corporation passed a resolution pursuant to s. 6 (1) of the Private Streets Works Act, 1892, to execute certain private street works in a road on a building estate owned by the respondent company. The respondents, who had built houses on the estate and intended to build more on the land that remained vacant, were liable, as owners under s. 5 of the Act, to be charged with about half the cost of the works proposed by the appellants, which were to lay a three-inch surface of tar macadam on the existing surface of the road in so far as this surface provided a basis of hard core and were estimated to cost some £6,000. In January, 1952, objections by the respondents, under s. 7 (d), to the appellants' proposals on the ground that they were insufficient or unreasonable or that the estimated expenses were excessive were dismissed by a court of summary jurisdiction. In May, 1952, the respondents applied to the appellants pursuant to the Town and Country Planning Act, 1947, Part III, for permission to develop the site by building houses on the vacant land. In June, 1952, permission was refused and the respondents intended to appeal to the Minister of Housing and Local Government, and, if the appeal were allowed, to undertake building operations which would entail cutting into the road to provide water, gas, and electricity services for the new houses, while the use of heavy vehicles on the road in connexion with the building would seriously damage the proposed new surface. In July, 1952, quarter sessions allowed the respondents' appeal against the dismissal of their objections on the ground that the proposed works were premature, and, therefore, unreasonable, and an appeal by the corporation to the Divisional Court was dismissed. On appeal to the Court of Appeal:—*Held*, the word "unreasonable" in s. 7 (d) of the Act of 1892 was sufficiently wide to justify the justices' rejection of any proposed works on the ground that they were not reasonable at the time they reached their decision, and, therefore, in considering whether or not the works proposed by the corporation were unreasonable, quarter sessions and the justices were entitled to reach the conclusion which they did. (Southgate Corporation *v.* Park Estates (Southgate), Ltd. C.A.) 207

PUBLIC HEALTH

1. Dustbin; notice by local authority requiring provision by owner; successful appeal by owner to magistrates; no order by magistrates as to costs; appeal by owner to quarter sessions with regard to costs; "person aggrieved"; jurisdiction of quarter sessions; Public Health Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 49), s. 301.—A local authority served on the agents of the owner of a house a statutory notice under s. 75 (1) of the Public Health Act, 1936, requiring them to provide a dustbin. The agents requested the notice to be withdrawn on the ground that the demand should have been made on the tenant and not on the landlord, and the local authority referred them to their right of appeal under the subsection. The agents appealed to a court of

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summary jurisdiction which decided that the tenant was liable to provide the dustbin and made an order accordingly. On an application being made on behalf of the agents for costs, the chairman of the magistrates said: "The magistrates have considered the question of costs and make no order". The agents appealed to quarter sessions, as "persons aggrieved" under s. 301 of the Act, against the refusal to grant costs. Quarter sessions varied the justices' order by allowing the agents their costs and allowing the appeal to quarter sessions with costs. On a motion by the local authority for *certiorari*:—*Held*, that a successful party before magistrates has a legal right to ask for costs and to demand that his application be considered in a judicial manner; if he is deprived of his costs without the matter being considered judicially, he is an "aggrieved person" within s. 301 and, as such, entitled to appeal to quarter sessions; in the present case there was no evidence to show that the magistrates had exercised their discretion judicially in refusing costs; and, therefore, quarter sessions had jurisdiction to review the question of costs, and no order of *certiorari* would issue. (R. *v.* Lancashire Quarter Sessions Appeal Committee. *Ex parte* Huyton-with-Roby U.D.C. Q.B.D.) ... 526

2. Nuisance; discomfort and inconvenience to tenant; want of internal decorative repair; Public Health (London) Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 50), s. 82 (1) (a); Public Health Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 49), s. 92 (1) (a).—Mere want of internal decorative repair of a dwelling-house does not constitute a nuisance within the meaning of s. 82 (1) (a) of the Public Health (London) Act, 1936 (or, *semble* s. 92 (1) (a) of the Public Health Act, 1936), even if it causes discomfort and inconvenience to the tenant. Betts *v.* Penge U.D.C. (106 J.P. 203), distinguished. (Springett *v.* Harold. Q.B.D.) 211

3. Rag collection; delivery of "article" to person under 14; goldfish; Public Health Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 49), s. 154 (1).—By s. 154 (1) of the Public Health Act, 1936: "No person who collects ... rags ... shall ... (b) while engaged in collecting ... sell or deliver, whether gratuitously or not ... any article whatsoever to a person under the age of 14 years." A goldfish is not an "article" within the meaning of this subsection, as the word "article" is apt to describe an inanimate object only. (Daly *v.* Cannon. Q.B.D.) 122

R

RATING

1. Lands tribunal; valuation officer; jurisdiction to hear; appeal by ratepayer from decision of local valuation court; no cross-appeal by valuation officer; notice by valuation officer to appear at hearing of appeal; application by valuation officer for assessment directed by local valuation court to be increased; Local Government Act, 1948 (11 and 12 Geo. 6, c. 26), s. 48 (4), s. 49 (1); Lands Tribunal Act, 1949 (12 and 13 Geo. 6, c. 42), s. 1 (3) (e); Lands Tribunal Rules, 1949 (S.I. 1949, No. 2263), r. 9 (1), r. 38 (4).—A ratepayer entered an objection to a proposal by a valuation officer to increase the assessment of his hereditament from £27 to £140 gross value and from £20 to £80 rateable value. On an appeal by the valuation officer the local valuation court directed that the hereditament be entered in the valuation list at a gross value of £100 and a rateable value of £80. The ratepayer gave notice of appeal to the Lands Tribunal on the grounds that part of the property was exempt from rates under the Local Government Act, 1929, s. 67, or, alternatively, that the assessment by the local

RATING—*continued* PAGE

valuation court was excessive. The valuation officer gave notice under the Lands Tribunal Rules, 1949, r. 9 (1), of his intention to appear at the hearing of the appeal, and at the hearing of the appeal he contended that, although there was no cross-appeal by him, the tribunal had jurisdiction under s. 49 (1) of the Local Government Act, 1948 (as amended by the Lands Tribunal Act, 1949, s. 1 (3) (e)) to increase the assessment made by the local valuation court to the figures proposed by him. The tribunal rejected this contention. On appeal by the valuation officer:—*Held*, the jurisdiction of the tribunal under the Local Government Act, 1948, s. 49 (1) (as amended) on the hearing of an appeal from a local valuation court to "give any directions which the local valuation court might have given" was limited by the wording of s. 48 (4) of that Act to "such directions . . . as appear to [the tribunal] to be necessary to give effect to the contention of the appellant if and so far as that contention appears to [the tribunal] to be well founded", and, therefore, the tribunal could not adjudicate on matters which were not raised before it by an appellant, and, as there was no cross-appeal by the valuation officer, the tribunal had no jurisdiction to consider his application to increase the assessment directed by the local valuation court (Ellerby *v.* March (Valuation Officer). C.A.) 382

2. Limitation of action; distress for rates; application for warrant more than six years after demand for rate; "action"; "proceeding in a court of law"; date when cause of proceedings accrued; Limitation Act, 1939 (2 and 3 Geo. 6, c. 21), s. 2 (1) (d).—Justices hearing an application for the issue of a distress warrant in respect of arrears of general rates are acting judicially and not ministerially. Dicta of VISCOUNT SIMON, L.C., and LORD WRIGHT in Potts *v.* Hickman (1940) (105 J.P. 26, 30, 46), applied. The application for the issue of a distress warrant is a proceeding in a court of law and comes within the definition of "action" in s. 31 (1) of the Limitation Act, 1939, and within s. 2 (1) (d) of that Act, which embraces all proceedings in a court for the recovery of money. "Cause of action" in s. 2 (1) is to be construed as "cause of proceeding", and, as the cause of proceeding in respect of arrears of rates arising when the ratepayer fails to pay on demand a rate duly made and published in respect of which he has been assessed, the period of limitation runs from the demand for the rates, and a distress warrant cannot issue after six years from the date of demand. (China *v.* Harrow U.D.C. Q.B.D.) 41

RENT CONTROL

1. Excessive rent; recovery; amount recoverable; "payment of any sum in excess of the rent so entered"; Furnished Houses (Rent Control) Act, 1946 (9 and 10 Geo. 6, c. 34), s. 4 (1) (a).—Tenants of furnished rooms for which a rent was entered in the register kept by the local authority under the Furnished Houses (Rent Control) Act, 1946, s. 3 (1), paid for their rooms sums in excess of the registered rent. On claim by the tenants under s. 4 (2) of the Act for the repayment to them of the total rents paid by them:—*Held*, "payment of any sum in excess of the rent" entered on the register in s. 4 (1) (a) of the Act meant payment of any sum over and above the registered rent; that was the amount of the "payment . . . made . . . in contravention of the foregoing subsection" referred to in s. 4 (2); and, therefore, under s. 4 (2) the tenants were entitled to recover, not the full amount of the rent paid by them, but only such amount of it as was in excess

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of the registered rent. (Henry *v.* Taylor. Termer and Others *v.* Same. C.A.) 250

2. Furnished letting; alleged excess rent; rent of entire premises fixed by tribunal and registered; letting of part of premises at rent in excess of that fixed for the whole; Furnished Houses (Rent Control) Act, 1946 (9 and 10 Geo. 6, c. 34), s. 4 (1) (a).—The rent of three furnished rooms, a kitchen, and the use of a bathroom in a house was fixed by a rent tribunal at £1 7*s.* per week and registered pursuant to s. 3 (2) of the Furnished Houses (Rent Control) Act, 1946. The landlord subsequently let one of the rooms and the kitchen at a rent of £2 per week, subsequently reduced to £1 15*s.* per week. She was charged with receiving rent in excess of the registered rent, contrary to s. 4 (1) (a) of the Act of 1946, and was convicted by the justices:—*Held*, (LORD GODDARD, C.J., dissenting) that no offence had been committed and the conviction must be quashed, as the words "those premises" in s. 4 (1) (a) related to the premises which were the subject of the letting to the tribunal, in respect of which the rent was fixed and registered, and the rent received by the landlord had been received in respect of a different unit of letting, albeit part of the premises originally let. (Gluchowska *v.* Tottenham Borough Council. Q.B.D.) 175

3. Premium; purchase of furniture at excessive price; price exceeding "the reasonable price of the articles"; return of premium; Landlord and Tenant (Rent Control) Act, 1949 (12 and 13 Geo. 6, c. 40), s. 3 (1) (b).—The landlord of a dwelling-house containing three floors to which the Rent Restriction Acts applied let each floor separately as a furnished flat. When the second floor flat became vacant the plaintiff became a tenant of that flat on the basis of an unfurnished tenancy and stated that she was willing to purchase the furniture. The wife of the landlord, who was the owner of the furniture, together with the plaintiff made an inventory of the furniture, priced each item, and arrived at a value of £500. That value was higher than the market value. The tenant alleged that the market value was £180, and claimed, by reason of the ss. 2 (5) and 3 (1) (b) of the Landlord and Tenant (Rent Control) Act, 1949, the return of the sum of £320, being the alleged excess of the price paid over the reasonable price of the articles of furniture:—*Held*, (i) "the reasonable price" in s. 3 (1) (b) of the Act of 1949 was not necessarily synonymous with the market value, and while, no doubt, the latter was an important element in determining the former, yet in doing so one had to consider all the relevant circumstances, but without regard to extraneous circumstances, *e.g.*, the desire of the prospective tenant to attain the tenancy; (ii) the determination of the reasonable price was a question of fact, and, as there was no error in principle below, the appeal failed. (Eales *v.* Dale and Another. C.A.) 255

4. Rent tribunal; jurisdiction; "dwelling-house"; premises containing shop and dwelling accommodation; covenant by tenant to use premises for no business other than that of a tobacconist; Rent and Mortgage Interest Restriction Act, 1939 (c. 71), s. 3 (3); Landlord and Tenant (Rent Control) Act, 1949 (c. 40), s. 1 (1).—MOTION for an order of *mandamus* directed to the Folkestone Rent Tribunal (now part of the Kent Rent Tribunal) to hear and determine an application by the applicant, under the Landlord and Tenant (Rent Control) Act, 1949, s. 1 (1), to fix a reasonable standard rent for premises

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known as No. 72, High Street, Folkestone, of which the applicant was the tenant. The premises consisted of a shop on the ground floor and dwelling rooms on the two upper floors. The residential part, to which there was a separate entrance, consisted of a kitchen, a living room, and a water closet on the first floor, and two bedrooms on the second floor. The services to the premises consisted of gas, electricity, and water. These services were not provided separately and independently for the shop. The lease contained a covenant by the tenant not to carry on any business on the premises other than that of a tobacconist. The rent tribunal held that they had no jurisdiction to entertain the application as the premises were let to the applicant as business premises. (R. *v.* Folkestone Rent Tribunal. *Ex parte* Webb. Q.B.D.) 235

5. Rent tribunal; jurisdiction; furnished premises; house let as "boarding house"; premises used partly for business purposes and partly as residence; "right to occupy as a residence"; Furnished Houses (Rent Control) Act, 1946 (9 and 10 Geo. 6, c. 34), s. 2 (1).—The principles laid down in R. *v.* Brighton and Area Rent Tribunal. *Ex parte* Slaughter (*ante* p. 231) as those to be applied in determining whether premises, intended to be used partly as business premises and partly as a dwelling-house, constitute a "dwelling-house" for the purpose of the Rent Restriction Acts, 1920-1939, and s. 1 of the Landlord and Tenant (Rent Control) Act, 1949, are also applicable in determining whether furnished premises are within the Furnished Houses (Rent Control) Act, 1946. By an agreement in writing dated March 1, 1953, furnished premises were let to a tenant as a "boarding-house" at a rent of £327 12*s.* per annum. There was no covenant restricting user, and the tenant and her family occupied the basement and one bedroom on the ground floor as their home and conducted the rest of the premises as a boarding house. The tenant applied to a rent tribunal to fix the rent for the premises under s. 2 of the Furnished Houses (Rent Control) Act, 1946, but the tribunal declined jurisdiction on the ground that the premises had been let as business premises:—*Held*, that the premises were premises "the right to occupy" which "as a residence", within s. 2 (1) of the Act, had been granted to the tenant, and, therefore, the tribunal had jurisdiction to consider the reference. (R. *v.* York, Harrogate, Ripon, and Northallerton Areas Rent Tribunal. *Ex parte* Ingle. Q.B.D.) 236

6. Rent tribunal; jurisdiction to fix standard rent; "dwelling-house"; premises consisting of shop with living accommodation above; covenant by tenant as to user; premises not to be used save as shop for greengrocer's business; tenant not prevented from living on premises; Rent and Mortgage Interest Restrictions Act, 1939 (2 and 3 Geo. 6, c. 71), s. 3 (3); Landlord and Tenant (Rent Control) Act, 1949 (12 and 13 Geo. 6, c. 40), s. 1 (1).—Premises let to a tenant for the purpose of his living within them as his house fall within the ambit of the Rent Restriction Acts, 1920-1939, provided that (a) he is not a service tenant and (b) that they come within the Acts by reason of their rent or rateable value. By a lease dated October 6, 1950, premises consisting of a shop, office, store room, and kitchen on the ground floor, and a self-contained flat, approached by an outside staircase, on the first floor, were let for a term of twenty-one years at a rent of £350 a year. The premises had never before been let as a whole, and the two floors were separately assessed for rates. The lease contained, *inter alia*, the following covenants by the tenant:

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(a) not to "use the demised premises or any part thereof save as a shop only nor [to] permit the demised premises or any part thereof to be used otherwise than for the business of a . . . greengrocer . . .; (b) not to "keep the demised premises closed for a longer period than fourteen days at any one time during any one year of the . . . term without first obtaining the consent of the landlord; and (c) not to make any alteration to the demised premises without the written consent of the landlord. In 1953 the tenant, who carried on business in the shop portion and lived in the flat, applied to a rent tribunal under s. 1 (1) of the Landlord and Tenant (Rent Control) Act, 1949, to fix a reasonable standard rent for the premises. The tribunal held that the premises were not a "dwelling-house" within the meaning of the Rent Restrictions Acts, and that, therefore, they had no jurisdiction:—*Held*, that the covenant in the lease should not be construed so as to prohibit the tenant from living on the premises provided that he carried on the business of a greengrocer; that the premises were let to the tenant for the purpose of living in them as his house, and so were a "dwelling-house" within the Rent Restrictions Acts; and that, therefore, the tribunal had jurisdiction to fix a reasonable standard rent. Whiteley *v.* Wilson ([1952] 2 All E.R. 940), applied. (R. *v.* Brighton and Area Rent Tribunal. *Ex parte* Slaughter and Another. Q.B.D.) 231

ROAD TRAFFIC

1. Goods vehicle; carriage for hire; "A" licence; failure of owner to comply with conditions; hirer charged with aiding and abetting; oral and written assurance as to permit obtained from driver by hirer; Road and Rail Traffic Act, 1933 (23 and 24 Geo. 5, c. 53), s. 9 (1).—The driver of a goods vehicle obtained from the appellants, who carried on the business of forwarding agents, an order for the carriage of a load of steel from Newport, Mon., to Newark. The owner of the vehicle held an "A" licence, but did not hold a permit for it to carry goods for hire or reward more than 25 miles from its operating centre, as required by s. 52 (1) of the Transport Act, 1947. Prior to giving the order the appellants' manager had asked the driver if he had a permit to carry the load, and, on the driver replying in the affirmative but failing to produce any permit or other authorization, required the driver to sign on behalf of his employers an assurance that the employers held the necessary documents and would produce them if required. The driver was unaware of the fact that a permit was required for the carriage of the load. Justices convicted the appellants on an information charging them with aiding and abetting the owner of the vehicle in the use of it for the carriage of goods for hire or reward outside the permitted radius without the necessary permit, contrary to s. 9 (1) of the Road and Rail Traffic Act, 1933:—*Held*, that, as the appellants had acted in good faith and taken reasonable precautions and did not know the essential circumstances which would constitute the offence, they could not be held to have aided and abetted it, and the conviction must be quashed. Carter *v.* Mace (1949) (113 J.P. 527), distinguished. (Davies, Turner & Co. *v.* Brodie. Q.B.D) 532

2. Motor lorry; wooden container affixed to platform; unladen weight to include body; "alternative body"; Road Traffic Act, 1930, s. 26; Motor Vehicles (Construction and Use) Regulations, 1951 (S.I. 1951, No. 2101), reg. 61, reg. 63 (2), reg. 101.—A motor lorry, which had a flat wooden platform extending behind the driver's cab, had

ROAD TRAFFIC—*continued* PAGE

affixed to the platform a large wooden box-like container by means of six adjustable wing nuts and bolts. The presence of the container enabled the lorry to be used for carrying cattle, which could not otherwise be carried on the lorry. The container was useless for the carriage of cattle or anything else unless placed on some existing base or platform. When the lorry was used for the conveyance of animals, the container would be necessary to, or ordinarily used with, the lorry, but it was not ordinarily used for purposes requiring flat base or low-sided body. The unladen weight of the lorry without the container was under three tons, but with the container it was in excess of three tons. By s. 26 of the Road Traffic Act, 1930, the unladen weight of a vehicle is inclusive of the body, and, where alternative bodies are used, the heavier is taken. Justices convicted the appellant on informations charging him with failing to cause the unladen weight and maximum permitted speed of the lorry to be marked on it, contrary to reg. 61 and reg. 101 of the Motor Vehicles (Construction and Use) Regulations, 1951, and with permitting the use of a vehicle which did not display a speed limit disc contrary to reg. 63 and reg. 101. Such markings and disc were required only in the use of a "heavy motor car," *i.e.*, one which weighed unladen more than three tons:—*Held*, that to constitute an "alternative body" for the purpose of s. 26 it was not sufficient that something such as a container should merely be added to the body of the vehicle, and, therefore, the weight of the container was not to be included in computing the weight of the lorry (which, consequently, was not a "heavy motor car"), and no offence had been committed. M'Cowan *v.* Stewart (1936 S.C. (J.) 36) followed. *Per curiam*: In an information in such a case the vehicle in question should be alleged to be a heavy motor car. (Cording *v.* Halse. Q.B.D.) 558

3. Motor vehicle; defective brake; mechanical failure; circumstances over which owners and driver had no control; absolute prohibition; Motor Vehicles (Construction and Use) Regulations, 1951 (S.I. 1951, No. 2101), reg. 75, reg. 101.—The respondent B. was driving a motor van owned by his employers, the respondents C.B. Co., and equipped with a vacuum-assisted hydraulic brake, part of which had been broken for some time. A collision occurred between the van and a lorry owing to the brake on the van failing to act. Two days before this a firm of automobile engineers had examined the van, but not the braking system. B. had made no complaint of the condition of the brake, the defective condition of which was due to a mechanical failure of part of the brake mechanism. Justices dismissed informations against both respondents alleging that they had used on a road a motor vehicle part of the braking system of which was not maintained in good working order, contrary to regs. 101 and 75:—*Held*, that, as reg. 101 imposed an absolute prohibition against user in contravention of reg. 75, an offence by both respondents had been proved, and the case must be remitted to the justices with a direction to convict both respondents. Provincial Motor Cab Co. *v.* Dunning (1909) (73 J.P. 387), applied. (Green *v.* Burnett and Another). Q.B.D.) 536

4. Motor vehicle; use of trailer with defective brake; charge against owner of permitting use; offence due to fault of driver and assistant; position of limited company; Motor Vehicles (Construction and Use) Regulations, 1951 (S.I., 1951, No. 2101), reg. 75, reg. 101.—The appellants, a limited company, owned a motor lorry and trailer.

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In order that the brakes of the trailer should be operated by the driver of the lorry a brake cable on the lorry had to be connected to a brake cable on the trailer. The lorry and trailer left the appellants' premises with the connexion properly made and the braking system in good order. The driver of the lorry took with him an assistant, both being servants of the appellants. The lorry was taken to other premises for loading, and for that purpose it was necessary to uncouple the trailer. When the loading was complete, the driver left it to his assistant to couple the trailer to the lorry, and the assistant failed to connect the brake cable. The driver took no steps to check the connexion. Justices convicted the appellants on a charge of permitting to be used, contrary to the Motor Vehicles (Construction and Use) Regulations, 1951, reg. 101, on a road a trailer the braking system of which was not "maintained in good and efficient working order and . . . properly adjusted", as required by reg. 75:—*Held*, by the majority of the court (SLADE, J., dissenting) that, as the charge was one of permitting the user, there could not be a conviction unless some person for whose criminal acts the appellants were responsible had "permitted" as opposed to "committed" the offence; that "permitting" imported a state of mind, and that either knowledge of the facts constituting the user or the wilfully shutting of eyes to the obvious or the allowing a servant to do something in circumstances in which a contravention of the regulation was likely, not caring whether such contravention took place or not, would have to be proved; that no different considerations in regard to the inferring of knowledge was to be imported whether the person charged was an individual or a limited company; and that, as the prosecution had failed to prove any "permitting" in this case by the appellants, the conviction must be quashed. Per PARKER, J., (delivering the judgment of the majority of the court): (i) The prohibition on user imposed by regs. 101 and 75 being absolute, and no proof of *mens rea* being required, if the appellants had been charged with using the vehicles contrary to the regulations instead of permitting the user, they would have had no defence, for a master, whether he be an individual or a limited company, "uses" his vehicle if it is used by his servant on his (the master's) business. (ii) Where legislation throws a wide net, it is important that only such persons should be charged as either deserve punishment or in whose case it can be said that punishment would tend to induce them to keep themselves and their organization up to the mark. Dictum of DEVLIN, J., in Reynolds *v.* G. H. Austin & Sons, Ltd. (1951) (115 J.P. 192), applied. (James & Son, Ltd. *v.* Smee. Q.B.D.) 536

5. Motor vehicle; use on road when part in dangerous condition; "causing" of offence; delivery by owner to garage for repair; negligence of garage proprietor's workmen; car handed back to owner with insufficiently tightened hub-nuts; accident while owner driving; liability of garage proprietor; Motor Vehicles (Construction and Use) Regulations, 1951 (S.I., 1951, No. 2101), reg. 101.—The owner of a motor van left it at the respondent's garage for the brakes to be re-shoed. On completion of the work the respondent delivered the van back to the owner, and later on the same day, while the owner was driving, one of the front wheels came off and injured a person walking on the pavement. The accident was due to the hub nuts not having been properly fastened by the respondent's workmen when replacing the wheels. The respondent was charged with unlawfully causing a vehicle to be used on a road in such condition that danger

ROAD TRAFFIC—*continued* PAGE

was caused to a person on the road, contrary to reg. 72 (1) and reg. 101 of the Motor Vehicles (Construction and Use) Regulations, 1951. The justices dismissed the information:—*Held*, that the word "causes" in reg. 101 involved some degree of dominance or control over the user of the vehicle, or some express or positive mandate from the person alleged to have caused the user to the person using; that after the respondent had delivered the van back to the owner he ceased to have any control over it; and, therefore, he had not caused it to be used, and the justices had come to a right decision. Dicta of LORD WRIGHT in McLeod (or Houston) *v.* Buchanan ([1940] 2 All E.R. 179, 187), applied. (Shave *v.* Rosner. Q.B.D.) 364

6. Use of uninsured car; conditional discharge; not to be used to avoid disqualification; Road Traffic Act, 1930 (20 and 21 Geo. 5, c. 43), s. 35 (2); Criminal Justice Act, 1948 (11 and 12 Geo. 6, c. 58), s. 12 (2).—Where a defendant is convicted of using a motor vehicle on a road, in respect of which offence disqualification for holding a licence is imposed by s. 35 (2) of the Road Traffic Act, 1930, unless special circumstances are found to exist, if such special circumstances do exist and the justices think fit not to impose a penalty, they may grant a conditional discharge, but where no such special circumstances exist, justices must not order probation or conditional discharge for the purpose of avoiding such disqualification. (Dennis *v.* Tame. Q.B.D.) 358

S

SHOPS

Sunday closing; second-hand car dealer; premises permitted to be open for sale of petrol and accessories; second-hand cars on view for sale; inspection of car by customer and discussion with attendant in one case; customer taken for demonstration ride in another case; Shops Act, 1950 (14 Geo. 6, c. 28), s. 47.—Informations were preferred against W. and H., garage proprietors, charging that each had failed to close his shop on a Sunday, contrary to s. 47 of the Shops Act, 1950. Each was entitled under sch. V (1) (h) to the Act, to keep his premises open on Sunday for the sale of motor accessories, petrol and oil. On Sunday, August 2, 1953, the manager of W.'s garage allowed customers to inspect and make inquiries about a car which was displayed for sale. On the same day an employee of H. took prospective customers out in a car for demonstration drives. The justices convicted in each case:—*Held*, that the purpose of the Act being to protect shop assistants, and the premises being lawfully open, it was stretching the Act too far to say that the shop was open for serving customers merely because inquiries were made about a car which was exposed for sale, and, accordingly, no offence had been committed in the first case and the conviction must be quashed; but in the second case the fact that customers were taken for demonstration rides in a car made a material difference and afforded evidence on which the justices were entitled to hold that the premises were not closed for the selling of cars on Sunday, and in that case the conviction must be affirmed. (Waterman *v.* Wallasey Corporation. Hesketh *v.* Same. Q.B.D.) 287

STATUTORY INSTRUMENTS

Validity; order made by Minister of Supply and laid before Parliament; schedules forming part of order not printed, and not certified by

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Minister as not requiring to be printed; Statutory Instruments Act, 1946 (c. 36), s. 2 (1), s. 3 (2); Statutory Instruments Regulations, 1947 (S.I., 1948, No. 1), reg. 7.—The defendants were charged on indictment with buying steel sheets at prices which were in excess of the permitted prices set out in the deposited schedules forming part of the Iron and Steel Prices Order, 1951. It was stated in the order that it was made by the Minister of Supply on February 16, 1951, and laid before Parliament on February 20, 1951. When the order was sent to the Queen's printer to be printed as a statutory instrument, the Minister of Supply failed to certify, under the Statutory Instruments Regulations, 1947, reg. 7, that it was unnecessary to print the schedules, but, although there was no certificate of exemption from printing, the schedules were not printed. At the trial it was submitted on behalf of the defendants that, as the Minister had not certified, under reg. 7, that it was unnecessary to print the deposited schedules, the Statutory Instruments Act, 1946, s. 2 (1), required the schedules as well as the order itself to be printed, and that, therefore, as the schedules were not printed as part of the order, the order was not validly made and was not admissible in evidence:—*Held*, (i) after a statutory instrument had been made by the Minister concerned and laid before Parliament, it became a valid statutory instrument within the Act of 1946; the other requirements of the Act and of the regulations of 1947 in regard to the printing, publishing and issue of the instrument were merely matters of procedure, and did not affect the validity of the instrument; and, therefore, the order of 1951, having been made by the Minister and laid before Parliament, was validly made and was admissible in evidence, although the deposited schedules had not been printed and the Minister had failed to certify, under reg. 7 of the regulations of 1947, that it was unnecessary to print them; (ii) under s. 3 (2) of the Act, the burden lay on the Crown of proving that at the date of the alleged contraventions reasonable steps had been taken to bring the order to the notice of persons likely to be affected by it. (R. *v.* Sheer Metalcraft, Ltd. and Another. Surrey Asz.) 190

T

TITHE AND TITHE RENTCHARGE

"Owner" of land; highway authority; liability to redemption annuity in respect of land occupied by highway; Tithe Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 43), s. 10 (1), s. 17 (1) (a); Law of Property Act, 1925 (15 and 16 Geo. 5, c. 20), s. 7 (1) (as amended by Law of Property Act, 1926 (16 and 17 Geo. 5, c. 11), s. 7 and schedule).—Certain highways having become vested in the defendant authority by virtue of s. 29 (2) of the Local Government Act, 1929, the Tithe Redemption Commission claimed that the authority were liable to pay tithe redemption annuity in respect of those highways as "owners" thereof within the meaning of s. 17 (1) of the Tithe Act, 1936:—*Held*, the vesting of a highway by a statute such as the Local Government Act, 1929, conferred on a highway authority in respect of part of the land which, although indefinite in extent, included the essential surface, a legal estate known to the law, namely, a fee simple determinable on the land in question ceasing to be used as a highway; the Local Government Act, 1929, was a "similar statute" within the meaning of s. 7 (1) of the Law of Property Act, 1925; the authority, therefore, were holding the land for an estate in fee simple absolute in possession,

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and were an "owner of land" within the Tithe Act, 1936, s. 17 (1) (a), liable, under s. 10 (1) of the Act, to bear an apportioned share of the tithe redemption annuity payable in respect of land of which the highway formed part. Rolls *v.* St. George the Martyr, Southwark, (1880) (44 J.P. 680), Tunbridge Wells Corpn. *v.* Baird (1896) (60 J.P. 788), and Foley's Charity Trustees *v.* Dudley Corpn. (1910) (74 J.P. 41), applied. Decision of DANCKWERTS, J. (*ante* p. 19), affirmed. (Tithe Redemption Commission *v.* Runcorn Urban District Council. C.A.) 265

TOWN AND COUNTRY PLANNING

1. Development value; determination; appeal to Lands Tribunal; evidence; admissibility; values agreed in cases of comparable land; Lands Tribunal Act, 1949 (12 and 13 Geo. 6, c. 42), s. 1 (3) (d).—The Central Land Board having determined the development value of certain land at a figure with which the owners disagreed, the owners appealed under the Lands Tribunal Act, 1949, s. 1 (3) (d), to the Lands Tribunal. At the hearing of the appeal the board sought to tender in evidence a schedule of 11 claims under Part VI of the Town and Country Planning Act, 1947, which were alleged to have been negotiated by the district valuer of the Inland Revenue Department on the board's behalf and to have been agreed with third parties in respect of land which, the board contended, was comparable land. The owners objected that such evidence was inadmissible and their objection was upheld by the tribunal. On appeal:—*Held*, evidence of claims concerning comparable land and agreed between the board and third parties was admissible, and the award of the tribunal must be remitted. Norwich Assessment Committee *v.* Porter (1922) (86 J.P. 149), applied. (Stockbridge Mill Co., Ltd. *v.* Central Land Board. C.A.) 372

2. Purchase notice; service by trustees; "owner of land"; person entitled to receive rackrent; grant by freeholders of long lease; confirmation of purchase notice; Town and Country Planning Act, 1947 (10 and 11 Geo. 6, c. 51), s. 19 (1), (2), s. 119 (1).—In 1873 the owners of certain freehold premises in the city of London granted a lease of the premises for 80 years at a rent of £350 a year. In 1922 the lessees granted a sub-lease of the premises at a rent of £1,136 a year In 1925 the then freeholders leased the premises to the sub-lessees for 75 years at a rent of £750 *per annum* subject to and with the benefit of the original lease of 1873. In 1940 the sub-lease of 1922 and the lease of 1925 were assigned to H. & Sons, Ltd., who, in 1942, acquired the residue of the lease of 1873. During the war of 1939-45, the premises were totally destroyed by enemy action, and in 1950 H. & Sons, Ltd. applied to the Corporation of London, as planning authority, for permission to develop the site. Permission was refused, and H. & Sons, Ltd., then served a purchase notice on the corporation under the Town and Country Planning Act, 1947, s. 19 (1), requiring the corporation to purchase the leasehold interest in the site. The notice was confirmed by the Minister and the leasehold interest of H. & Sons, Ltd., was transferred to the corporation. In March, 1952, the freeholders applied to the corporation for permission to develop the site, and, on this being refused, they appealed to the Minister under s. 16 (1) of the Act. The appeal was disallowed, and in September, 1952, the freeholders served a purchase notice under s. 19 (1) of the Act on the corporation, requiring them to purchase their freehold

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interest in the site. On December 31, 1952, this notice was confirmed by the Minister. On appeal by the freeholders from a decision of the Divisional Court quashing the order made by the Minister:—*Held*, the freeholders were an "owner" of land within s. 19 (1) of the Town and Country Planning Act, 1947, because the context of s. 19 (1) required that meaning and required that the definition of "owner" in s. 119 (1) of the Act be excluded. Truman, Hanbury, Buxton & Co. *v.* Kerslake (1894), (58 J.P. 766), considered. *Quaere*, whether a rent negotiated as less than rackrent can, by change of circumstances, become a rackrent. Borthwick-Norton *v.* Collier (1950) (114 J.P. 375), considered. Decision of the DIVISIONAL COURT (1953) (117 J.P. 329), reversed. (R. *v.* Minister of Housing and Local Government. *Ex parte* Corporation of London. C.A.) 88

3. Unpermitted development; enforcement notice; sufficiency of description of development; desire to question validity of notice in magistrates' court; jurisdiction of magistrate; Town and Country Planning Act, 1947, s. 23 (4).—In October, 1949, the ground floor and the first floor of certain premises, which, on July 1, 1948 (the appointed day under the Town and Country Planning Act, 1947), were used for residential purposes, were let to a firm of builders for a few weeks. The premises were thereafter vacant for some time, but in February, 1950, the ground floor was let to a firm of optical manufacturers, and in October, 1950, the first floor was let to a firm of tailors. All these uses were light industrial uses within the meaning of the Town and Country Planning (Use Classes) Orders, 1948 and 1950. The use of the second floor was residential on July 1, 1948, but by November, 1953, it had changed to light industrial use. In March, 1951, the whole premises were sold to one K. In November, 1953, the local planning authority served on K. three enforcement notices under s. 23 (1) of the Town and Country Planning Act, 1947, one relating to each floor, requiring him to discontinue the user of the premises as an industrial building. In each case the development complained of was stated to be "beginning the use of the land described . . . for the purpose for which the same is now used, namely, an industrial building". K. appealed to a court of summary jurisdiction under s. 23 (4) of the Act against the three notices and asked the court to quash each on the grounds (i) that the description of the development was too vague, and (ii) that with regard to the ground floor and the first floor, the development had taken place in October, 1949, when the builders first used the premises, and that, as the use by the optical manufacturers and tailors and that by builders fell within the same class of user, no further permission was required in 1950. The magistrate, being of the opinion that his jurisdiction to quash an enforcement notice was strictly confined to the matters set out in s. 23 (4) (a) of the Act, held that he had no jurisdiction to quash the notices:—*Held*, that the magistrate had come to a right decision (Keats *v* London County Council. Q.B.D.) 545

TRESPASS

Ship; discharge of oil to lighten vessel stranded in estuary; damage to adjoining foreshore; necessity; need to prove negligence.—A tanker approaching an estuary in weather which was not unusual developed a steering fault and stranded on a revetment wall in the estuary. Justifiably in view of the danger to the vessel and the crew, the master jettisoned 400 tons of oil, which was subsequently deposited on the plaintiffs' foreshore, causing damage. The plaintiffs brought

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an action for damages for trespass, nuisance, and negligence against the shipowners and the master, and on the allegation of negligence pleaded negligent navigation by the master. The defendants denied the negligence and pleaded that the stranding was attributable to the steering being out of control, which was caused by the propeller's striking "some object." They denied trespass or nuisance. The cause of the steering being out of control was found as a fact to be a fracture of the stern frame of the vessel, fouling the propeller, but no evidence was given of how the fracture had come about:—*Held*, (i) MORRIS, L.J., *dissentiente*) the stranding of the vessel was an accident such as did not happen in the ordinary course of things with a well-found vessel and the defendants had not discharged the onus on them of explaining its occurrence, including the cause of the fracture of the stern frame: dictum of ERLE, C.J., in Scott *v.* London Dock Co. (1865) (3 H. & C. 601), and (per DENNING, L.J.) The Merchant Prince ([1892] P. 179) applied; the plaintiffs' failure to plead the defendants' negligence in sending a vessel to sea with a fractured stern frame did not prevent their setting it up, because the defendants had not pleaded that that had been the cause of the stranding; and, therefore, the defendants were liable for negligence; (ii) liability in trespass or for nuisance, if it existed, would be destroyed by necessity unless there was negligence (per SINGLETON, L.J.) or would arise only if there was negligence (per MORRIS, L.J.); the liability for trespass did not exist because the discharge of oil was not directly on to the plaintiffs' foreshore (per DENNING, L.J.). Per DENNING, L.J.: as the discharge of oil did not involve use by the defendants of any land, it was not a private nuisance: dictum of LORD WRIGHT in Sedleigh-Denfield *v.* O'Callaghan ([1940] 3 All E.R. 364), applied; but, as the oil was likely to be carried on to the shore to the prejudice and discomfort of Her Majesty's subjects, it was a public nuisance: Reg. *v.* Mutters (1864) (Le. & Ca. 491), and Scott *v.* Shepherd (1773) (2 Wm. Bl. 892), applied; and as the defendants had failed to show that the discharge was an inevitable accident, *i.e.*, a necessity which arose utterly without their fault, the defendants were liable to the plaintiffs therefor: Weaver *v.* Ward (1616) (Hob. 134), Dickenson *v.* Watson (1682) (T. Jo. 205), Wringe *v.* Cohen ([1939] 4 All E.R. 241), and Sadler *v.* South Staffordshire & Birmingham District Steam Tramways Co. (1889) (53J. P. 694), applied. Decision of DEVLIN, J. (1953) (118 J.P. 1), reversed. (Southport Corporation *v.* Esso Petroleum Co., Ltd. and Another. (C.A.)... 411

V

VAGRANCY

Living on earnings of prostitution; driver of car; use of house and car by men for sexual intercourse with prostitutes; permission by defendant; defendant paid by men; no money paid to defendant by prostitutes; Vagrancy Act, 1898 (61 and 62 Vict., c. 39), s. 1 (1) (a), s. 1 (3) (as amended by Criminal Law Amendment Act, 1912 (2 and 3 Geo. 5, c. 20), s. 7 (1)).—The defendant, who was the driver of a motor car, was convicted by magistrates on an information charging that he, being a male person, for a period of six months unlawfully and knowingly lived in part on the earnings of prostitution, contrary to s. 1 (1) (a) of the Vagrancy Act, 1898. During the relevant period the defendant visited public houses known to be frequented by prostitutes, and parked his car outside. He allowed it to be used by men for sexual intercourse with the prostitutes, sometimes outside the

VAGRANCY—*continued* PAGE

public house, sometimes in the course of driving the men back to their camp, and sometimes in the neighbouring countryside to which they were specially taken. There were standard charges for the hire of the car, which were always paid by the men, the prostitutes being remunerated by the men in almost every case, not with money, but with drink, food or clothing. During part of the relevant period the defendant permitted his house to be used by prostitutes and men for the purpose of sexual intercourse, and for a time one of the prostitutes stayed at the house on the terms that she should pay for her board and lodging by prostituting herself with men whom she brought to, or who would be brought to her, at the house. On all these occasions, the defendant was paid by the men, and the prostitutes were remunerated with drink, food and clothing:—*Held*, that the conviction was right as (i) the money had been earned by prostitution, and it made no difference that it was paid direct to the defendant, he being in the same position as if the men had first paid the money to the prostitutes and they had handed it to him; (ii) in any event, he was habitually in the company of the prostitutes and exercising direction and influence over their movements, and, having failed to satisfy the court to the contrary, he was, therefore, under s. 1 (3) of the Vagrancy Act, 1898, as amended by s. 7 (1) of the Criminal Law Amendment Act, 1912, to be deemed to be knowingly living on the earnings of prostitution. (Calvert *v.* Mayes. Q.B.D.)... 76

W

WATER

Water supply; water rate; not preferential debt in bankruptcy; "parochial or other local rates"; Bankruptcy Act, 1914 (4 and 5 Geo. 5, c. 59), s. 33 (1) (a).—On February 1, 1954, a receiving order was made against the debtor and on February 28, 1954, he was adjudicated bankrupt, the official receiver being appointed trustee of the property of the debtor. The company carried on the undertaking of the supply of water in Eastbourne and the adjacent areas under powers regulated by the Eastbourne Waterworks Acts, 1859 to 1921. The company was a creditor of the debtor in respect of water rates, and on March 1, 1954, lodged a proof in respect of them, claiming that they fell within the category of "all parochial or other local rates" within s. 33 (1) (a) of the Bankruptcy Act, 1914, so as to be payable in priority to all other debts:—*Held*, there was no analogy between a water rate, which was a charge for the supply of a marketable commodity, and a local rate, and further there was no resemblance between "water rate" as defined in s. 3, of the Waterworks Clauses Act, 1847, and "rate" as defined in s. 68 of the Rating and Valuation Act, 1925, and, therefore, water rates were not within s. 33 (1) (a) of the Bankruptcy Act, 1914, so as to be payable in priority. (*Re* Baker. *Ex parte* Eastbourne Waterworks Company *v.* Official Receiver. Ch.D.) ... 495

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